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**DECENTRALISATION IN SOUTH AFRICAN LOCAL
GOVERNMENT: A CRITICAL EVALUATION**

by

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Thesis Presented for the Degree of

DOCTOR OF PHILOSOPHY

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Declaration

I hereby declare that the work contained in this thesis is my own original work and has not previously been submitted, either in its entirety or in part, to any university in fulfilment of the requirements for any degree.

A.M. Siddle

Date

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Abstract

Decentralisation in South African Local Government: A Critical Evaluation

The South African local government model is considered to be decentralised in character, incorporating various constitutional, policy and statutory instruments to enable local government to achieve its constitutionally mandated developmental objectives. Yet local government is widely viewed as being in a state of crisis. Many municipalities are seen as dysfunctional and incapable of performing their duties.

The hypothesis underlying this study is that the effective application of the principles of decentralisation, to the extent that they have been incorporated in the constitutional, policy and regulatory framework of local government in South Africa, is endangered by a lack of commitment to the concept of decentralisation by central government and by the failure by municipalities to implement at local level those rules, systems, mechanisms, powers and functions which are intended to reflect the principles of decentralisation; and that the achievement of the constitutional objectives of local government is thereby in turn endangered.

The thesis seeks to ascertain the extent to which the principles of decentralisation are incorporated in the regulatory framework of local government in South Africa, and to which the principles of decentralisation are applied in practice.

Accordingly, various “dimensions of decentralisation” are examined within the context of the local government framework, the objective being to determine the extent to which that framework incorporates these dimensions. In addition, the actual practice among municipalities regarding certain of these dimensions is examined. For the latter purpose, information was obtained from a sample of 37 municipalities across the country, by means of interviews and discussions with officials, the examination of documents, and the examination of publicly available data.

The study finds that the dimensions referred to above are reflected in the local government framework. It also finds that central government has shown tendencies to encroach, by statutory and regulatory means, on the autonomy of local government and thereby compromise the decentralised character of the local government framework. It also finds that there is a widespread failure on the part of local government to give effect to the critical dimensions of decentralisation by failing to observe specific requirements contained in the applicable framework.

Andrew McCalman Siddle

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Chapter 1

Introduction

1.1 Preliminary Remarks

This study arose from the author's involvement, which extended over a period of several years and covered some 50 municipalities throughout the country, in the South African local government environment. It became apparent at an early stage of this involvement that many of the municipalities with which the author had dealings had failed to implement significant aspects of the framework which had been established for the new local government dispensation. The new constitution and a battery of statutes had been adopted with a view to providing democratic, participative, responsive, efficient and effective government at local level, in accordance with a clearly decentralised model. Yet it was striking that there was widespread lassitude, inertia or simple indifference regarding the implementation of aspects of this new framework, as a result of which, it seemed, the supposed benefits of a decentralised system must inevitably be limited.

The purpose of this study is to examine the extent to which the precepts of decentralisation have been incorporated in South Africa's local government framework and the extent to which they are applied in practice within that framework. The ultimate object is to enhance an understanding of the malaise, which is more fully described later in this chapter, which afflicts South African local government

1.2 Local Government as a Subject for this Study

A study of local government may at first glance appear to be a none-too-complex task. As a sphere of government, it is often viewed – incorrectly, it is submitted – as a miniature version of national government, the main differences being that it is confined to a small territory, involves a limited number of participants and deals with local issues. In truth,

however, local government has peculiarities that influence the way in which its processes are carried out, and its participants act.

In the first place, local government deals with issues which are close to home. It follows that it is at this level that most citizens come into contact with and experience government and administration in any shape or form. In a geographic sense, the acts of local government may have limited consequences, but those consequences are often immediate, and touch directly the lives of citizens.¹ It may be said, therefore, that the relationships established between local government and citizens are the least abstract and, in a sense, most intimate, of relationships between citizens and any level of government.

In the second place, the tasks which local government are expected to perform are complex. A functional local authority performs – or should perform – a wide range of functions, usually greater in scope than that which a regional or national government department is expected to perform, and often with relatively limited resources. In this sense local government should be intrinsically multi-sectoral, being the only sphere of government that has the mandate to bring together a variety of sectoral issues within one development policy, programme or project (Atkinson 2002). Expectations of the ability of local government to meet these multi-sectoral demands are often high, and, as we shall see in the course of this study, sometimes unrealistic.

Third, local governments tend to have complex relationships with other levels of government. Even in notionally decentralised systems, they are, to a greater or lesser extent, subject to control from, and are dependent upon, higher levels of government. On the other hand, local government is simultaneously answerable to its own electorate. The result is that this level of government is subject to multiple pressures.

¹ John Stuart Mill noted that “It is obvious, to begin with, that all business purely local – all which concerns only a single locality—should devolve upon the local authorities. The paving, lighting, and cleansing of the streets of a town, and, in ordinary circumstances, the draining of its houses, are of little consequence to any but its inhabitants” (1862:113).

Local government has fulfilled an important role in society over the ages. For example, the ancient Greek city- state, or “*polis*,” provided a model of public participation to which modern concepts of democracy can trace their ancestry. Ancient Rome, a large city even by modern standards, paid great attention to the administration of local government, and performed a range of functions for its citizens which in many respects mirror those performed by modern local authorities in many countries.² Today, despite obvious historical and current differences between systems around the globe, local government worldwide is said to be at the forefront of service delivery; and generally there appears to be a corresponding level of trust in local authorities. For example, a poll conducted in the United States of America in 2008 indicated that 72% of US citizens claimed to have a great deal or fair amount of trust in their local government, while a mere 42% said the same of the executive branch of the Federal Government.³ In a study conducted of 33 European countries in 1999, it was found that in 14 of those countries, a clear majority of respondents thought it a “good thing” to give more powers to local government; in 15 cases more respondents thought it a good thing rather than a bad thing (the balance indicating that they “did not mind”); whilst in only 4 cases did a clear majority think it a “bad thing” (van der Walle *et al* 2006). Van Assche and Dierickx (2007), referring to a number of studies, conclude that in almost all countries, trust in local government is stronger than trust in central government.

It is therefore fair to say that the general view of local government, from a global perspective, is a favourable one. This study, however, is about local government in South Africa, which has its own peculiar challenges and issues, and which has come to be viewed in a less favourable light than is suggested above.

² Throughout much of Rome’s history, including the periods of the Republic, the Principate and the Empire, it was clear that the Romans were familiar with the concept of the planned city. In addition, they had laws, systems, functionaries and other resources for regulating and providing building controls, demolition, streets, cleansing, traffic, open spaces, drains, sewers, flood protection, water reticulation, fire control, public health, burials, markets and a host of other functions (Robinson 1991).

³ Gallup Opinion poll published 18 September 2008, available on Gallup Website www.gallup.com.

1.3 South African Local Government in Context

Once regarded as the “stepchild” level of government, local government in South Africa moved to centre stage in recent years. Local Government in South Africa as it existed prior to 1994 has been described as “racist, subservient, exploitative and illegitimate in nature,” and “inherently subservient to the racist policies of the central state” (de Visser 2005:58/60). The political system in which local government then operated “fundamentally damaged the spatial, social and economic environments in which people live, work, raise families and seek to fulfill their aspirations” (Ministry for Provincial Affairs and Constitutional Development 1998:ix). A consequence was that by the time of the 1994 democratic elections, South African cities were “characterised by dire housing and service backlogs, inequalities in municipal expenditure, the spatial anomalies associated with the ‘apartheid city’, profound struggles against apartheid local government structures, high unemployment and many poverty-stricken households” (Pillay *et al* 2006:2).

With the advent of the new political dispensation in South Africa, Local Government was given a critical role to play in rebuilding local communities and environments, as the basis for a democratic, integrated, prosperous and non-racial society. There was to be a new developmental local government system, “committed to working with citizens, groups and communities to create sustainable human settlements which provide a decent quality of life and meet the social, economic and material needs of communities in a holistic way” (Ministry for Provincial Affairs and Constitutional Development 1998:ix). Previously, municipalities focused primarily on the regular maintenance of infrastructural services and social facilities. They maintained streets, water pipes, storm water drainage, electricity networks, parks and cemeteries. But the focus of municipalities had changed. They were now required to serve as the foremost development agencies within government as a whole (Atkinson 2002).⁴

⁴ One of the most striking features of the role of the new model of Local government that it was to take on a developmental character: “Developmental local government is local government committed to working with citizens and groups within the community to find sustainable ways to meet their social, economic and material needs and improve the quality of their lives (Ministry for Provincial Affairs and Constitutional Development 1998:17).

The objects of local government are stated in Section 152 of the Constitution of the Republic of South Africa, namely:

- to provide democratic and accountable government for local communities;
- to ensure the provision of services to communities in a sustainable manner;
- to promote social and economic development;
- to promote a safe and healthy environment; and
- to encourage the involvement of communities and community organisations in the matters of local government.

Given the importance of these objects, it is hardly surprising that “the historical burden on the shoulders of local government is colossal and mounting” (Pieterse 2002:1).

Yet, despite this burden, there was great optimism about the potential role of local government in addressing the many problems faced by South Africa. In his foreword to the White Paper on Local Government, the then Minister for Provincial Affairs and Constitutional Development declared that:

“South Africa has been given a rare and historic opportunity to transform local government and to meet the challenges of the next century...Local government stands at the threshold of an exciting and creative era in which it can and will make a powerful impact on reconstruction and development in our new democracy” (Ministry for Provincial Affairs and Constitutional Development 1998:v).

The Constitution and the White Paper gave rise to a profusion of legislation aimed at promoting the constitutionally mandated objects of Local Government referred to above. In order to achieve these objects, the Constitution endowed local government with a range of powers and functions, ranging from air pollution to local tourism, to electricity

reticulation, to storm water management, to licensing and control of undertakings that sell liquor to the public, to traffic and parking. These powers and functions, according the White Paper, “should be exercised in a way that has a maximum impact on the social development of communities – in particular meeting the basic needs of the poor – and on the growth of the local economy” (Ministry for Provincial Affairs and Constitutional Development 1998:18).

The transformation of local government in South Africa has been described as being nothing short of remarkable, as evidenced by the fact that it has been de-racialised, municipal jurisdictions have been consolidated, the notion of developmental local government has been introduced, and the intergovernmental fiscal system has been overhauled to make greater financial resources available at local municipal level (Atkinson 2007). It is certainly true that the scope of the proposed transformation was enormous. It is difficult to imagine, more than a decade after work of restructuring the system of local government began in earnest, quite how much planning, energy, time, debate and resources were required in order to attain the stated objectives. Nonetheless, local government under the new dispensation was immediately faced with an astonishing range of challenges, some of them long-standing, some of them new, including:

- the creation of larger areas of jurisdiction through the demarcation of new municipal boundaries;
- an increase in service backlogs which municipalities were tasked with eliminating;
- a complete re-definition of local government roles as set out in the Constitution;
- the devolution of several new powers and functions to local government, without a sufficient corresponding increase in its fiscal base;
- new and often fraught relationships between councillors and officials;
- new concepts of service delivery;
- lack of capacity;
- other institutional weaknesses, such as corrupt and nepotistic practices;
- new developmental duties; and

- unrealistic expectations from other levels of government and the citizenry.

One is therefore left asking the question: just how successful has the process been?

1.4 A Sphere of Government in Crisis

It has been said that “through the leadership of municipalities, basic service delivery has been extended to the marginalized to a degree that is unprecedented in South Africa’s history” (de Visser 2009:4). It may well be that there has been an unprecedented extension of basic service delivery; but if so, is this due to “the leadership of municipalities,” or despite it? Twelve years after the release of the White Paper, and remarkable though the transformation might have been, there are obvious signs that the optimism which was felt at the time was to a large degree misplaced. Whilst local government was given the massively important task of leading the developmental crusade, it seems that in many cases, local government as a sphere of government cannot perform even the basic functions which previously constituted its reason for existence, let alone come to grips with its new developmental role, and has lost credibility. For example:

- 21% of South Africans trust their elected local governments “not at all”, whilst 28% trust them “just a little”; 29% trust them “somewhat”; just 13% trust them “a lot”; and 10% “don’t know” or “haven’t heard enough”; (Afrobarometer Website, Round 4 Survey Findings);
- IDASA’s Local Governance Barometer Survey found that Civil Society organisations rated governance in local government at 40 out of 100 (officials and councillors, not surprisingly, rated it higher) (Memela et al 2008);
- The 2007 Community Survey conducted by Stats SA found that, notwithstanding the fact that sanitation is a function that is clearly assigned to local government by the constitution:
 - In 5 Provinces, less than 50% of households own flush toilets;
 - 56.3% of households in Limpopo used a pit latrine without ventilation;

- In the Eastern Cape, 25,2% of households had no toilet at all (Stats SA website);
- For the 2007/2008 financial year, only 4 municipalities achieved unqualified⁵ audit opinions from the Auditor-General; 19% of municipalities could not be audited because they did not submit reports (Auditor-General 2009); the number of unqualified reports remains at four for the 2008/2009 financial year (Auditor-General 2010);
- “Recent evidence shows that there is a growing perception that local government is unable to manage its own affairs as well as perform its powers and functions”(SA Local Government Briefing, May 2009: 29);
- According to the National Taxpayers’ Union, residents and ratepayers associations had declared disputes with 40 municipalities over poor service delivery (SA Local Government Briefing, March 2009:27);
- Rates were being withheld in protest in more than 20 of those municipalities (SA Local Government Briefing, March 2009:27);
- There are repeated instances of corruption and maladministration in municipalities, and perceptions of corruption are overwhelming – the Afrobarometer survey indicated that 72% of respondents believed that, some, most or all of local government councillors are involved in corruption;
- Municipalities across the country owe various water boards more than R 1,5 billion in arrears for bulk water supplies (Cape Times, 16 September 2010);
- According to the National Treasury, municipalities countrywide underspent their budgets by 9.1% in the 2008/9 financial year (Cape Times, 1 September 2010);
- Community protests against poor service delivery have become a constant feature of South African life, starting in 2004⁶ and continuing up to the time of writing.

⁵ “Unqualified” in the sense that there were no “other matters.” See Chapter 12 for a discussion on audit opinions of the Auditor-General

⁶ See Atkinson 2007 for a discussion of the emergence and spread of community protests.

The litany of local government failures seems endless,⁷ and it was perhaps inevitable that the Minister of Cooperative Governance and Traditional Affairs, within whose brief local government falls, was moved finally to acknowledge in a speech delivered to the South African Local Government Association conference on 10 June 2009 that many of the country's 283 municipalities were in a "state of paralysis and dysfunction"; and that local government "is a sector that is perceived to be incompetent, disorganised and riddled with corruption and maladministration."⁸

What went wrong? Authors and researchers have suggested a number of possible causes, including the lack of funding, lack of social capital,⁹ and poor institutional design and lack of capacity.¹⁰ All of these (and other) explanations are no doubt valid to a greater or

⁷ Tapscott sums up the position by noting that there is a "lack of trust... a general unwillingness to pay taxes or tariffs into municipal coffers or to participate in the process of local governance. As a consequence of this state of affairs local councils lack popular support and legitimacy. At the same time, they are also able to operate with limited public accountability. In this context, corruption has become endemic, public funds are frequently misappropriated, and service delivery is generally poor or non-existent. This cycle leads to further public disillusionment and further withdrawal from the process of local government..."(Tapscott, 2008: 215).

⁸ Reported in the SA Local Government Briefing, June 2009:15. Strangely enough, the same minister told Parliament's Portfolio Committee on Cooperative Governance and Traditional Affairs some sixteen months later that "Saying municipalities is dysfunctional is incorrect...Municipalities do have problems, but they are functional." (Reported in the Cape Argus, 20 October 2010). It is difficult to imagine what occurred in the local government sphere in those intervening sixteen months to cause the minister to change his opinion so drastically.

⁹ Social capital is the set of "informal rules, norms, and long-term relationships that facilitate coordinated action and enable people to undertake cooperative ventures for mutual advantage." (World Bank 1997:114). "The complex ways in which these sectors of civil society [including business and industry, voluntary and community groups, and non-governmental from environmental, social and economic arenas] build and maintain capacity (economic, social and mutual support) for action to promote the needs of different groups is encompassed in the concept of social capital...the concept can be broadly defined as : 'those networks and assets that facilitate the education, coordination and cooperation of citizens for mutual benefit'"(Evans 2005:14). The idea of social capital has become broadly used, having emerged during the 1980's and having been famously popularised by Putnam (1993) in the following decade.

¹⁰ "It has become clear that many local authorities lack the capacity to initiate or implement developmental programmes. This lack of capacity has surfaced most visibly in the inability of many local authorities to survive financially... Deeper analysis, however, suggests that the weaknesses of local authorities are deeper than financial management. Many councillors are totally inexperienced in local government, party-political conflict is much more pronounced in local government, many councils have not established co-operative relationships with their officials, other municipalities have become administratively bloated, or key administrative staff have vacated their posts. At the same time, local authorities have to address a much greater range of issues than municipalities did in the past."(Atkinson 2001:534). It is worth noting that these issues were clearly identified as early as 2001; they continue to bedevil local government at the time of writing.

lesser extent. The present study will not attempt to disprove one in favour of another, it being accepted that each of these plays some role, however great or small, in explaining the phenomenon described above.

The last of these explanations, namely, that relating to institutional design and lack of capacity is, however, of particular interest for present purposes. Some authors who favour this view suggest that institutional mechanisms in the new constitution and the resulting structure of governance constitute serious impediments to addressing the issues of economic development and service delivery. Others suggest that the problem lies in the varying degrees of managerial competence or incompetence and a general lack of skills throughout the public service sector (Koelble & LiPuma 2008). One such author (Atkinson 2007) places much of the blame for the failure of municipal government to supply services on the failure by national government to put in place mechanisms for both oversight and assistance by national to local level government, and the organisational incompetence of municipal government.

Olowu and Wunsch (2004) describe and contrast the idealised process by which local governance emerges from decentralisation reforms, on the one hand, and the frequently encountered actual experience of decentralisation reforms, on the other:

- In the idealised process, we find (i) the political elite choosing to embark on the decentralisation process, (ii) followed by the necessary reforms being defined and promulgated, (iii) which leads to a redistribution of authority, resources and accountability; (iv) from this emerge decision-making institutions, broadened public participation, and greater accountability. As a result, we see a (v) reinforcement of local support for the improved system, and it can fairly be said that at that point, (vii) local governance is a “going concern.”
- In the frequent actual experience, on the other hand, (i) the elite announce decentralisation reforms; (ii) some reforms are then defined and promulgated; (iii) redistribution of authority, resources and accountability to localities is announced; (iv) at this point several patterns emerge: incomplete statutory reform prevents

effective control; resources are retained or captured by central actors; resources are consumed paying for salaries; local councils are ineffective because of low levels of education, poor organisation, infrequent meetings, internal division and executive dominance; local institutions are designed to maintain central control; and /or local elites dominate local governance from behind the scenes; (v) this results in poor performance and non-accountability, which discourages local support; (vi) local governance remains weak in consequence; and (vii) recentralisation occurs.

The South African experience does not fit precisely either of the above two scenarios described by Olowu and Wunsch. Certainly, as has been shown time and again, South African local government is marked by poor performance and lack of accountability, of the kind described in the “actual experience” above. At the same time, however, South Africa has adopted a framework which goes far beyond the mere definition and promulgation of some reforms and the announcement of redistribution of authority, resources and accountability. It is a framework which enjoys constitutional authority and which is supported by a comprehensive range of legislative measures, most of which by now have been in force for a considerable time. Yet in addition to the patterns which emerge as described in the “actual experience” described above, South Africa’s attempt to achieve good local governance has, despite its having an impressive framework, been bedevilled by a weak commitment to the precepts of decentralisation both at central and local government level.

1.5 Hypothesis, Research Objectives and Research Questions

Having regard to the discussion contained in the previous section, the hypothesis underlying this study is therefore that the effective application of the principles of decentralisation, to the extent that they have been incorporated in the constitutional, policy and regulatory framework of local government in South Africa, is endangered by a lack of commitment to the concept of decentralisation by central government and by the failure by municipalities to implement at local level those rules, systems, mechanisms,

powers and functions which are intended to reflect those principles of decentralisation; and that the achievement of the constitutional objectives of local government is thereby in turn endangered.

The objective of the proposed research is twofold, namely:

- To examine and determine the extent to which the principles of decentralisation have been incorporated and supported in the constitutional, policy and regulatory framework of South African Local Government; and
- To examine and determine the extent to which the principles of decentralisation are applied by local government in practice within this framework.

It follows that two corresponding research questions stand to be answered, namely:

- To what extent are the principles of decentralisation incorporated and supported in the regulatory framework of Local Government in South Africa? and
- To what extent are the principles of decentralisation applied in practice within this framework?

The point of departure of this study is that the proper application of institutional and operational rules provided by the decentralised model of local governance which has been adopted in South Africa is essential in order to avoid the failure of policy and the weakening of local governance.¹¹ The focus is on the extent to which the principles of decentralisation are incorporated in the South African local government framework and the manner in and extent to which they are applied in practice. As Olowu and Wunsch (2004) point out, legal acts providing for decentralisation are among the prerequisites to

¹¹ A long-standing school of thought emphasises institutional design as a basis for explaining institutional performance. This tradition assumed that viable government depended largely on the arrangement of its formal parts. The experience of several democratic experiments during the inter-war years, however, showed that “painstaking design did not ensure good performance” (Putnam 2003:10). This is undoubtedly correct; it is, however, submitted that whilst the existence of the rules comprising such design does not guarantee success, without them, and without their being properly implemented, there is no prospect of success in the first place.

local governance, but do not in themselves achieve it. But, it is submitted, if those acts are improperly applied or ignored, then the process will have failed even before it has scarcely begun, resulting in the doubtless unanticipated consequences of the kind described above.

This study examines the constitutional, policy, statutory and procedural reforms which are intended to give effect to the notions of decentralisation in local government in South Africa. The framework which is thereby created consists of a multitude of systems, platforms and institutions which are intended to enable a municipal administration to function. The existence of those reforms and the resultant framework do not automatically result in effective local governance. There are other key intervening factors which are necessary to translate those reforms into effective local governance – such as effective local autonomy and authority, adequacy of resources, effective local institutions and accountable political processes (Olowu & Wunsch 2004). Nonetheless the adoption and implementation of those reforms at local government level is a critical element in achieving the objective of effective local governance within a decentralised model. This study aims to describe the manner and extent to which those reforms have been adopted in the South African local government framework, and to describe the extent to which they have been applied in practice in the local government environment.

1.6 Justification for this Research

As was indicated above, a massively important responsibility has been placed on South African local government, but there are undeniable indications that it is failing in its duty of fulfilling this responsibility.

The consequences of failure are profound, and serious efforts to understand the causes of such failure should be encouraged. This research is timely in that local government in South Africa is at a crossroads. 2009 and 2010 were particularly trying years for South African local government in general, with, as we have seen, a litany of failures coming to the fore, and with national government finally coming to the realisation that all is not well

in the local government sphere. In response to these problems, the Cabinet approved a turnaround strategy for local government in December 2009. Crucial issues are whether government's analysis of the challenges facing local government is accurate, and whether its response to those challenges is appropriate.

It is important, therefore, to undertake a close examination of the framework which guides local government, and how that framework is applied in practice, in order to better understand the nature of the difficulties this level of government faces in order to be able to propose workable solutions. It is intended that the present research should promote an understanding of the difficulties facing local government and facilitate the development of solutions. It is also intended that in the process, the research should contribute towards the fields of governance, public administration, general management and policy development. For this purpose, 37 municipalities across the country were examined in the course of this study, the intention being to base it on a wide, representative sample.¹²

1.7 Organisation of Study

This study is divided into the following chapters:

- *Chapter 1: Introduction:* The present chapter introduces the subject, places the issues in context, sets out the justification for the research, and defines the research objectives and the scope of the study.
- *Chapter 2: Literature Review: Decentralisation- The Concept and its Emergence:* The literature concerning decentralisation as a global phenomenon is reviewed in this chapter. It examines the concept of decentralisation, its origins and its rise, as well as the types and levels of decentralisation.
- *Chapter 3: Literature Review: Decentralisation - Objectives and Obstacles:* This chapter provides a review of the literature on decentralisation insofar as it relates

¹² See Chapter 5 for details on the selection of the sample of municipalities.

to the objectives which a decentralised system is intended to achieve, and the obstacles which confront the achievement of those objectives.

- *Chapter 4: The South African Local Government Framework:* The recent history of local government in South Africa is traced in this chapter, as are the constitutional, policy and statutory elements which make up the current local government framework in South Africa.
- *Chapter 5: Methodology and Related Matters:* The methodology employed in this research is discussed in this chapter.
- *Chapter 6: Dimensions of Decentralisation: A Basis for Evaluation:* The aim of this chapter is to extract the essential dimensions of decentralisation in order to provide a basis for evaluating the extent to which decentralisation is incorporated in the South African local government framework.
- *Chapter 7: Evaluation: Constitutional Security, Size, Democratic Process and Intergovernmental Relations:* This chapter presents an evaluation of the following dimensions of decentralisation as contained in the South African Local government framework, namely, constitutional security, size, democratic process and intergovernmental relations.
- *Chapter 8: Evaluation: Executive Structure and Administrative Authority:* An evaluation of the local government framework in the context of dimensions of executive structure and administrative authority is provided in this chapter. It also examines the extent to which systems aimed at enhancing executive authority are applied in practice in municipalities.
- *Chapter 9: Evaluation: Institutional Capacity:* This chapter evaluates the incorporation and application of the dimension of institutional capacity in the South African local government framework, and examines the extent to which relevant systems provided for by statute are applied in practice at local government level.
- *Chapter 10: Evaluation: Public Participation:* This chapter evaluates the incorporation and application of the dimension of public participation in the South African local government framework, and examines the extent to which relevant systems provided for by statute are applied in practice at local government level.

- *Chapter 11: Evaluation: Jurisdictional Scope and Legislative Authority:* This chapter evaluates the incorporation of the dimensions of jurisdictional scope - that is, the scope of the power and functions exercised by a municipality - and legislative authority. It also examines the extent to which municipalities exercise their jurisdictional scope and legislative authority in practice.
- *Chapter 12: Evaluation: Fiscal Dimensions:* The incorporation and application of fiscal dimensions of decentralisation in the South African local government framework, namely, revenue raising authority and revenue sharing, are examined in this chapter. Also examined are the extent to which municipalities apply statutory systems for enforcing their revenue raising authority, and the extent to which they are reliant on revenue sharing with national government. Finally, it examines the manner in financial resources are managed in local government.
- *Chapter 13: Government's Response to the Crisis in Local Government:* This chapter examines the response of the national government to the crisis in South African Local Government, and considers the prospects of success of that response.
- *Chapter 14: Conclusion:* This chapter considers the principal conclusions to be drawn from the research.

Chapter 2

Literature Review: Decentralisation - The Concept and its Emergence

2.1 Introduction

2.1.1 *The State of the Literature*

There exists a vast body of literature on the subject of decentralisation, yet it has been described as being “far from exhilarating” (Manor 2006:283). Schneider (2006), on the other hand, states that although the literature on decentralisation is rich and varied it is, at the same time, confused, and provides a home to contradictory hypotheses; as a result, we know very little definitively. In addition, as Manor (1999) points out, much of the literature on decentralisation is the work of economists and specialists in public administration, and there is a tendency on their part to underemphasise and misperceive the motivations and actions of politicians, and the political (rather than the administrative or legalistic) preoccupations of bureaucrats.¹³

Literature on the subject until recently also tended to be - but was not exclusively so - rather unquestioning as to the merits of decentralisation. Saito (2008) suggests that excessive expectations and uncritical approval of decentralisation have made critical scrutiny of decentralisation very difficult; and it is only more recently that more realistic assessments have started to emerge.¹⁴

¹³ See also Heller (2001) who identifies two “diametrically opposed transformative visions” in the decentralisation debate, namely, that of the technocrats whose view is “formed by an unbounded faith in the ability of experts to apprehend and transform the world” and that of the “anarchocommunitarians” who argue that “the advent of liberal democracy does little to change the overly centralized and elite-controlled character of post-colonial states” (135).

¹⁴ See also Asthana (2003) who suggests that the bias towards decentralisation may be due to the lack of empirical studies.

2.1.2 Objective and Scope of this Chapter

For the sake of convenience, the literature review on decentralisation is divided into two chapters. The present chapter has the principal objectives of presenting a review of the literature so as to provide a broad understanding of the concept of decentralisation, with particular reference to the definition of decentralisation, and the types and levels of decentralisation, as well as the motives behind decentralisation. The next chapter will deal with the objects of decentralisation and the obstacles its implementation faces.

2.2 What is Decentralisation?

2.2.1 A General Definition

Treisman (2007) writes that people define centralisation and decentralisation in many different ways, with the result that any two scholars or policy makers who debate the subject will usually have different things in mind. Perhaps this is something of an exaggeration, but it is certainly true that there are many concepts of what constitutes decentralisation. It would be tempting to list them, but a better purpose would be served by seeking a practical, workmanlike definition of the concept. The United Nations proposes the following definition:

“Decentralization is commonly regarded as a process through which powers, functions, responsibilities and resources are transferred from central to local government and/or other decentralized entities. In practical terms, decentralisation is a process of striking a balance between the claims of the periphery and the demands of the centre. Decentralization, when appropriately structured, provides an arrangement through which critical issues (such as those of national unity and indivisibility, how to safeguard national interests and ensure coordinated and even development, equity in the

distribution of resources and local autonomy) can be recognized” (United Nations 2009).¹⁵

This definition is useful because, amongst other reasons, it recognises the importance of the transfer of powers, functions and resources from one level of government to another. At the very heart of the debate about decentralisation, after all, is the relationship between the various levels of government (Devas and Delay 2006),¹⁶ and the balance of power between those levels.¹⁷ The definition also recognises common basic objectives of decentralisation, and importantly, it recognises that it is a process of reforms and not merely a description of the political or fiscal systems in place in a given state at any one time.

Whilst this definition is useful enough, a difficulty arises in that writers generally distinguish between three types of decentralisation – administrative decentralisation, fiscal decentralisation and political decentralisation – and here, unfortunately, the matter is not so easily resolved by reference to a convenient universal definition, and a comparison of some of the different definitions cannot be avoided. The three types of decentralisation are considered in greater detail in subsections 2.2.2 to 2.2.4 below.

¹⁵ This definition is contained in the UN’s on-line Glossary on Governance and Public Administration. The Glossary was developed following the recommendations made at the Seventh Session of the United Nations Committee of Experts in Public Administration . See Bibliography for website details.

¹⁶ See also Saito: “...decentralization is a process to redefine the roles and responsibilities of the central and local governments... (it is) essentially a political process.” (2008:284); and Schneider: “By redrawing the political-administrative division of the state, decentralisation changes the geographical boundaries of political contestation, alters the relative power of different actors, and changes the location of government interaction with society. The result is a change in the issues that are likely to appear on the agenda and the interests that are likely to prevail in political competition” (2006:344-345).

¹⁷ A useful definition of the intergovernmental balance of power is provided by Falleti, who refers to it as “the relative power or degree of autonomy of subnational officials with regard to national officials. Intergovernmental power is dependent on (1) economic resources, which enhance the capacity of political actors to pursue their desired courses of action; (2) legal authority, which sets the institutional limit that economic resources can reach; and (3) organizational capacities, which facilitate coordination at each level of government” (Falleti 2005:333).

2.2.2 *Administrative Decentralisation*

Falleti (2005) defines administrative decentralisation as the set of policies that transfer the administration and delivery of social services such as education, health, social welfare, or housing to sub-national governments. It may entail the devolution of decision-making authority over these policies, but this is not a necessary condition.¹⁸

By contrast, O'Dwyer and Ziblatt (2006) define it in terms of the degree of autonomy enjoyed by sub-national levels of government, and more specifically, in terms of the "control exercised over local revenue." The higher the percentage of local revenues that comes from locally-raised taxes, the higher the level of administrative decentralisation since, of all forms of revenue, taxes offer sub-national governments the greatest autonomy in policy making. Grants and loans offer less autonomy, and discretionary transfers offer the least.¹⁹

Administrative decentralisation is in turn defined by Schneider (2006) as the process of granting local jurisdictions autonomy from central control. This autonomy includes general policy-making authority and personnel control, as well as control over what is done with public finances. Treisman (2007), on the other hand, maintains that administrative decentralisation exists when at least one policy is implemented not by the central government but by locally based agents appointed by and subordinate to the central government.

Manor (1999) equates administrative decentralisation with deconcentration, which refers to the dispersal of agents of higher levels government into lower level arenas.²⁰ The terms

¹⁸ See Falleti 2005:329.

¹⁹ See O'Dwyer and Ziblatt 2006:341.

²⁰ Manor emphasises that when deconcentration occurs in isolation, or when it occurs together with fiscal decentralisation but without democratisation, it enables central authority to penetrate more effectively into those arenas without giving up any authority. "In such circumstances, it tends in practice to constitute centralization, since it enhances the leverage of those at the apex of the system" (Manor 1999:5).

“administrative decentralisation” and “deconcentration” are used interchangeably by Manor.²¹

2.2.3 *Fiscal Decentralisation*

Various definitions have been proposed for fiscal decentralisation. Falleti (2005) defines it as the set of policies designed to increase the revenues or fiscal autonomy of sub-national governments. Fiscal decentralisation policies can assume different institutional forms such as an increase of transfers from the central government, the creation of new sub-national taxes, or the delegation of tax authority that was previously national.

Taking a somewhat different approach, O’Dwyer and Ziblatt (2006) define fiscal decentralisation in terms of sub-national government expenditures as a percentage of total government expenditures. Expenditures are all cash outlays made by a given level of government, and revenues include all cash inflows to sub-national governments, including taxes, loans and grants. The larger the percentage of revenues and expenditures passing through sub-national governments, the greater the level of fiscal decentralisation.

According to Schneider (2006), fiscal decentralisation concerns the proportion of fiscal impact at levels other than the central government. This impact can be measured in several ways, often in terms of stabilisation, allocation and distribution. Stabilisation policy involves governments injecting money into the economy (or withdrawing it) to influence the overall level of economic activity. Allocation policy directs resources towards one activity or another. Distribution policy governs the channelling of wealth to a particular group, region or set of individuals. Fiscal decentralisation refers to the role of sub-national units in these activities.

²¹ See Manor 1999:5. Deconcentration is, however, often treated by other authors as a different issue to administrative decentralisation, and is viewed as a level of decentralisation rather than a type of decentralisation.

Manor (1999) views fiscal decentralisation as referring to downward fiscal transfers, by which higher levels in a system cede influence over budgets and financial decisions at lower levels. This authority may pass to deconcentrated bureaucrats who are accountable only to superiors at higher levels, or to unelected appointees selected from higher up.

According to Treisman (2007), fiscal decentralisation requires the existence of “decisionmaking decentralisation” on tax or expenditure issues and sub-national governments being accountable for a large share of total government revenues or spending.

2.2.4 Political Decentralisation

As is the case with administrative and fiscal decentralisation, numerous definitions of political decentralisation have been suggested by various writers. Falletti (2005) defines political decentralisation as the set of constitutional amendments and electoral reforms designed to provide for the representation of sub-national polities. In this view, political decentralisation policies are designed to devolve political authority or electoral capacities to sub-national actors.

According to the definition provided by O’Dwyer and Ziblatt (2006), political decentralisation measures the importance of municipal and provincial elections. Schneider (2006) states somewhat more comprehensively that political decentralisation focuses on conducting political activities such as participation, organisation, elections and representation at the local level as opposed to the national level. According to Schneider, decentralised political systems are those in which political actors and issues are significant at the local level and at least partially independent from those at the national level. Under politically decentralised systems, citizens define interests and form identities on the basis of local concerns, and organisations such as parties and social movements operate locally and compete over local issues and in local elections.

Treisman (2007) divides political decentralisation into three sub-types. What he calls “decisionmaking” decentralisation” implies that at least one sub-national tier of government has exclusive authority to make decisions on at least one policy issue. “Appointment decentralisation” implies that government officials at one or more sub-national tiers are selected by local residents, independent of higher levels of government. “Constitutional decentralisation” occurs when sub-national governments or their representatives have a formal right to participate (in some non-trivial way) in central policymaking.

Finally, Kauzya (2007) states that political decentralisation refers to either or both of the following: (i) Transferring the power of selecting political leadership and representatives from central governments to local governments, and (ii) transferring the power and authority for making socio-politico-economic decisions from central governments to local governments and communities.

2.2.5 *Proposed Definitions of the Types of Decentralisation*

As was seen above, whilst defining decentralisation in general terms is in itself easy enough, the difficulty lies with understanding what is meant by the various types, or sub-categories, of decentralisation, for which several (sometimes confusing) definitions have been provided. The following are therefore offered as workable definitions to be used for purposes of this study:

- Administrative decentralisation is the process whereby the authority to administer and execute powers and functions (and by implication, the responsibility to deliver services) is transferred from national to sub-national government, thereby resulting in deconcentration of powers;
- Fiscal decentralisation is the process whereby revenues of the central government, and also the power to raise revenues from local sources, are transferred from national to sub-national governments;

- Political decentralisation is the process whereby sub-national governments, elected by local participants, are established within a constitutional framework and granted political power and authority to govern over particular geographical areas. In short, it is the transfer (whether whole or partial) of political power and authority from central to sub-national governments, and therefore involves the balancing of the exercise of power between various levels of government.

2.3 Levels of Decentralisation

2.3.1 *Three Broad Levels*

In Section 2.2, we examined the various types of decentralisation. The purpose of this section is to consider briefly the various levels of decentralisation.

According to Oxhorn (2009), decentralisation consists fundamentally of the transfer of power by the central state to sub-national levels of government. It is closely linked to the concept of subsidiarity, according to which functions are devolved to the lowest level of social order that is capable of completing them (Work 2002). It is essentially a process of vertical transfer that can be understood in terms of three broad levels: deconcentration, delegation and devolution. All three of them reflect varying levels of power transferred from the centre to sub-national authorities as a result of reforms in the central state apparatus. Deconcentration involves the least amount of autonomy, delegation slightly more, and devolution the most. The distinction between the three levels of decentralisation can perhaps conveniently be summed up as follows: deconcentration involves a bureaucratic, hierarchical relationship; delegation involves a contractual relationship; and devolution involves an arm's length relationship (Schneider 2006).²² The three levels are discussed in subsections 2.3.2 to 2.3.4 below.

²² Schneider (2006) suggests that these levels should be viewed as “break-points along a continuum of administrative autonomy.”

2.3.2 *Deconcentration*

The first level, deconcentration, occurs when a central government disperses responsibility for a policy to its local offices. This changes the spatial and geographical distribution of authority, but does not significantly change the autonomy of the entity to which the authority is given. Under such arrangements, the central government retains authority over the local office and exercises that authority through the hierarchical channels of the central bureaucracy (Schneider 2006). The central government designs a structure that enables its agents to work close to the local people in field units or agencies of central government (Kauzya 2007). Deconcentration may be said to reflect the decentralisation of policy administration or implementation, while policy continues to be made at central level (Oxhorn 2009). Deconcentration has been described as the first step in a newly decentralising government to improve service delivery (Work 2002).

2.3.3 *Delegation*

At the second level, delegation, policy responsibility is transferred to local governments or semi-autonomous organisations which are not controlled by the central government but remain accountable to it (Schneider 2006; Kauzya 2007). The central state in effect reserves control over key aspects of policy (Oxhorn: 2009). The distinguishing feature is that in delegation, the central government must exercise its control through the contractual relationship that enforces accountability on the part of local government.

2.3.4 *Devolution*

The third level, devolution, is the process of transferring decision-making and implementation power functions, responsibilities and resources to legally constituted local

governments (Kauzya 2007).²³ It has also been described as the arrangement whereby the central government allows quasi-autonomous local units of government to exercise power and control over the policy responsibility being transferred (Schneider 2006).²⁴ “The local unit is only accountable to the central government in so far as the central government can impose its will by threatening to withhold resources or responsibility that the local unit needs”(Schneider 2006:349). Oxhorn (2009) states that devolution necessarily implies that a significant measure of financial autonomy will accompany the process.

2.4 The Decentralisation Phenomenon

2.4.1 *An Article of Faith, a Fashion of Our Times*

Decentralisation has become one of the most predominant themes in the field of governance in recent years. There has been an overwhelming move towards the decentralisation of government by the granting of new powers, functions and resources to local and regional governments, something which has brought sub-national government to the forefront of politics (Faletti 2005). It has become a cornerstone of a wide range of policies promoting state reform, more effective service delivery and greater levels of democratisation through increased opportunities for citizen participation (Oxhorn 2009). Depending on one’s viewpoint, decentralisation might be seen as “an article of faith” (Heller 2001:132) or “one of the fashions of our times” (Manor 2006: 284) or “a new mantra for policymakers and academics alike that seems to transcend ideology and academic discipline” (Oxhorn 2009:2).

Manor, writing in 1999, noted that

²³ Kauzya (2007) adds a fourth level, namely, delocalization, which is the special distribution of central government socio-economic development facilities and activities such as schools, hospitals, and the like in peripheral regions.

²⁴ “The devolution category ... is often defined as decentralisation to democratically elected local bodies. Such a definition includes patterns of representation in the administrative dimension. This shifts focus, however, and introduces aspects not associated with administrative autonomy. Representation deserves attention in its own right, and belongs appropriately to the... dimension (of) political decentralisation” (Schneider 2006: 349).

“(Decentralization) is being considered or attempted in an astonishing diversity of developing and transitional countries – by solvent and insolvent regimes, by democracies (both mature and emergent) and autocracies, by regimes making the transition to democracy and by others seeking to avoid that transition, by regimes with various colonial inheritances and by those with none. It is being attempted where civil society is strong, and where it is weak. It appeals to people of the left, the center and the right, and to groups which disagree with each other on a number of other issues” (Manor 1999:1).

2.4.2 *Earlier Views on Centralisation and Decentralisation*

Multi-tier states have been common since ancient times, although the manner in which powers and functions were divided between the tiers does not seem then to have been a subject of much interest. Real interest in the functions of government, and how they were exercised, appears to have arisen during the Enlightenment, to which many of today’s arguments in favour of or against decentralisation may be traced (Treisman 2007). Decentralisation has not always been in vogue, even in circles where one might have thought that it would naturally enjoy favour. For example, some of the key figures who played a role in the founding of the United States of America were clearly of libertarian persuasion but were opposed to the notion of decentralisation.²⁵ In continental Europe, during the 19th century, the highly-centralised French model was considered to be the “latest word in administrative science” (Putnam 2003:18).²⁶ Of course, proponents of

²⁵ Included in this number were John Knox, (1750-1806) Revolutionary War General and later US Secretary of War; Alexander Hamilton (1757-1804), a Revolutionary War figure and first Secretary of the US Treasury; James Madison (1757-1836), fourth President of the United States of America and principal drafter of the US Constitution; and John Jay (1745-1829), a Revolutionary War figure and first Chief Justice of the United States. Hamilton, aided by Madison and Jay, had as his brainchild the *Federalist*, which consisted of a series of 85 papers published in the New York *Independent Journal* in 1787 and 1788. It was intended to persuade the voters of New York State to ratify the new constitution of the United States, which had been drafted that same year, and was strongly biased towards the centralised state. The views expressed in the *Federalist* would, by contrast, have been diametrically opposed to those of Madison’s frequent correspondent and contemporary, Thomas Jefferson, third President of the United States of America and principal author of the US Declaration of Independence, who was a staunch believer in a strictly limited federal government. Regarding the *Federalist*, see Kramnick (1987).

²⁶ Putnam relates that when the Italian state was proclaimed in 1860, despite a few calls for the establishment of regional governments within the new state, it was concluded that strong central authority

decentralisation were not silent either, with the likes of John Stuart Mill expressing vehement opposition to centralist tendencies.²⁷

2.4.3 *Late- and Post- Colonial Period*

Particularly in British colonies, during the late colonial period a system of decentralised local government had emerged and in many respects had flourished. It reflected a number of key attributes, such as a tradition of elected councils, a well-defined tax system, involvement of local government in a range of infrastructural services (supported by grant systems from central government), and involvement by local government in capital investment and community development activities (Olowu and Wunsch 2004). Post-independence leaders sought, however, to dismantle this arrangement, and there emerged a tendency towards centralisation. This may be attributed to several causes. The success achieved by victorious nations in the Second World War by centralising power and resources lent attraction to the notion of centralisation. Subsequent reconstruction - centrally guided - of states which had fared less well in the war added to the reputation of centralised systems being able to get things done (Manor 1999). During the 1950s and 1960s, economies which were managed along both Keynesian and Leninist lines made spectacular advances, and this tended to bolster the belief in the centralised state. The result was that for years after the Second World War, centralisation was the guiding principle for policy initiatives around the world (Oxhorn 2004).

was the necessary remedy for the weak integration of the state. “The majority of the makers of modern Italy (like most of their counterparts in the emerging states of today’s third world) insisted that decentralisation was incompatible with prosperity and progress” (2003:18).

²⁷ Mill declared that “It is but a small portion of the public business of a country which can be well done or safely attempted by the central authorities; and even in our own government, the least centralized in Europe, the legislative portion at least of the governing body busies itself far too much with local affairs, employing the supreme power of the State in cutting small knots which there ought to be other and better means of untying. The enormous amount of private business which takes up the time of Parliament and the thoughts of its individual members, distracting them from the proper occupations of the great council of the nation, is felt by all thinkers and observers as a serious evil, and, what is worse, an increasing one” (Mill 1862:108).

This optimistic view on centralisation was shared in many regimes in Latin America, Africa and Asia, where the idea enjoyed great popularity. In the 1950's and 1960's, the Statist model was adopted or aimed for by virtually all developing countries (Batley 2006). In Africa and Asia, in particular, welfare infrastructures burgeoned, the economic boom of the 1950's produced enormous revenues, and there was a widespread increase in state expenditures. Most of the new ruling parties "had just succeeded in what were usually highly centralized campaigns for self-rule...and these triumphs naturally inclined the new leaders to the view that further great accomplishments were likely, if they could sustain unified efforts by centralized, homogenising means" (Manor 1999:18). Decentralised local governments were seen as irritants or even obstacles to the building of powerful states (Olowu and Wunsch 2004). A role was also played by donor agencies which were eager to deal with centralised regimes, because they "could get things done quickly" (Manor 1999:21). In addition, aid programmes and academic advisers promoted the idea of the state bureaucracy as the lead agent for the transition to "modernisation," and aid agencies and multilateral institutions favoured large scale industrial and agricultural development projects which required government involvement (Batley 2006).

The result was that centralised governance was generally viewed in a favourable light; something which no doubt was welcomed by politicians who "everywhere strive to enhance their power, and those who stand at the apex of any political system therefore tend toward centralization." (Manor 1999:13).

But a series of problems eventually overtook centralised regimes. First, the demand for benefits from governments outstripped their capacity to respond. Second, slow (or no) economic growth took a heavy toll on that capacity. Third, within some of those systems, middle-level political activists began pocketing huge proportions of the resources passed to them. Fourth, senior leaders in many nations went to excess in centralising power in ways that eroded the institutional strength and autonomy of many of these systems. Finally, ordinary people began to experience a severe loss of faith in national leaders (Manor 1999).

Whilst it took time for the limits of centralised governance or commandism to be recognised in less developed countries, by the 1970s, they became quite apparent. Autocratic regimes were particularly dependent on economic performance to sustain their legitimacy and faced particularly severe difficulties such as inflation, debt burdens, and little or no economic growth. There developed “the widespread but rather vague sense in many nations that centralized structures had fallen well short of adequacy” (Manor 1999:24).

The stage was set for the wave of decentralisation which occurred in the 1980’s. The next sub-section discusses the motives which impelled this wave.

2.4.4 The Rise of Decentralisation: A Variety of Causes

Manor (1999) argues that the vague but widespread notion that centralised governance had failed allowed the idea of decentralisation to appeal to a diversity of regimes facing a variety of problems, and made decentralisation attractive to politicians with differing motives. But leaders were offered few clear and specific guides to help them choose particular forms of decentralisation. As a result, the processes which then developed in various countries varied considerably. Furthermore, would-be decentralisers had little or no empirical evidence to guide them as to what decentralisation was and was not capable of achieving, or what results might flow from the application of specific types of decentralisation. As a result, they were free to act on a variety of motives, and it seems that most decentralisers have operated with mixed motives and objectives, having “often proceeded on the basis both of statesmanlike considerations, seeking the genuine empowerment of groups at lower levels, and of hard-nosed calculations of self-interest” (Manor 1999:36-37).

A factor which had a marked effect on the promotion of decentralisation is the great advance in communications which occurred in the 1980’s and 1990’s, and which led to rapid adoption of the concept, apparently without an accompanying appreciation for all

that it entailed. Once a few leaders began experimenting with decentralisation, these advances promoted the spread of the concept and prompted others to learn about and seek to replicate their efforts. These changes were, however, disseminated around the world so rapidly that decentralisation became popular before the emergence of any evidence to support the existence of its supposed benefits. “In other words, decisions to decentralize were made not because its utility had been proven, but because it appeared possible that it could help them to cope with the loss of popular confidence in the centralized state” (Manor 1999:33). To some extent, also, the simple fact that the concept was fashionable may have contributed to its spread, enthusiastically abetted by consultants and advisors who had vested interests in ensuring that this occurred.²⁸

It seems clear, in any event, that no single cause triggered decisions (which were ultimately of a political nature)²⁹ to decentralise. As was noted earlier, decentralisation has been attempted by a great diversity of regimes, which also suggests that a diversity of influences has been at work, and that decentralisation has been undertaken for a variety of motives and with a variety of goals in mind (Manor 1999).

Several writers have added their views as to what drives decentralisation. Included amongst them are Bardhan and Mookherjee (2006), Hiskey and Seligson (2003), Nickson, (2006), Alam (2006), Devas and Delay (2006), Saito (2008), and Shah and Thompson (2004). They mostly agree that these motives are many and varied, although there is some debate as to the actual role played by some of these purported motives.

It would be futile to list all of the motives which each of them suggests; the following, however, appear to be amongst the most commonly cited or significant amongst them:

²⁸ A characteristic sequence attending a fad or fashion is an initial enthusiasm, eagerly promoted by gurus, followed by a relatively brief period of prominence and acceptability, which in turn is followed by a growing realisation that the promise is unlikely to be fulfilled, and then its eventual consignment to obscurity, leaving behind perhaps a few traces to mark its passing (Briggs and Fisher 2006). Whether this ephemeral existence is the fate of decentralisation remains to be seen.

²⁹ “Here...we need to focus mainly on how politicians think and react to the trends and problems which confront them. They are usually assisted by technocrats with expertise in the social sciences, but it is political leaders who nearly always make the key decisions about decentralization. Since politicians tend to be short of time and tranquillity in which to weigh policy decisions, and preoccupied with short-term trends and current problems, the impact of deeper causes is usually filtered through the distorting lens of these more immediate considerations” (Manor 1999:27).

- Political crises or pressures, due to ethnic or regional conflicts or other causes, which may prompt leaders to pre-empt future threats or disarm existing threats by widening political representation;
- A response to the growing negative public views of existing political systems;
- Fiscal crises;
- “Policy convergence,” in which policy responses of a similar nature were adopted to similar problems in countries at a similar stage of economic or political development;
- Unification of the state;
- Revival of a long-existing spirit of local-self-governance;
- Strengthening of power bases of established or new regimes;
- Institutional pressures such as from donor organisations,³⁰ often following external shocks which force drastic changes in policy, which saw good public management and administration with an emphasis on accountability as an aspect of good governance;
- Local demands;
- Genuine desire for political and economic transformation, such as the transition to democracy,³¹ enhancing participation and improving service delivery;

³⁰ Manor (1999) maintains that actual decisions to decentralise were, however, seldom donor-driven, and the World Bank and the International Monetary Fund tended to lag behind governments in less developed countries. Serious reservations existed in both institutions about the dangers posed by decentralisation, especially to macroeconomic management. Some bilateral agencies, according to Manor, were drawn to decentralisation more quickly, but they tended to support decentralised institutions once they were created. Other writers seem, however, to prefer the view that donor agencies played a far more critical role – for example, Work (2002).

³¹ Such as occurred following the collapse of the Soviet Union. With the disintegration of the USSR, the already largely discredited notion that commandism could be effective and popular was further eroded. The demise of the USSR and the democratisation of numerous other formerly autocratic regimes led to greater interest in accountability. “Local government, because of its proximity to civil society, was seen as a crucial mechanism for...bridging the gap between the state and civil society, and in transforming hitherto marginalized groups into full-fledged citizens” (Nickson, R 1995:2). Manor (1999) argues, however, that interest in decentralisation had crystallised in many countries well before Communist regimes broke down and the Cold War ceased. The effect was mostly to intensify the already existing interest in decentralisation.

- Changes of political ideology (either within an already ruling party or as a result of a new party coming to power);
- Other hidden agendas, such as shifting deficits downwards or devolving responsibility for spending to local governments.

Devas and Delay (2006) state that whilst there are no doubt many valid economic and administrative arguments in favour of decentralisation, the reality is that in many countries, decentralisation has been driven not so much by these arguments or by local level democratic demand, as by the interests of local and national political elites, by certain political realities at the centre, and by external pressures. Oxhorn (2001) takes a view which is not dissimilar and emphasises the political nature of decentralisation. He points out that economic efficiency and economic growth have been noticeably absent from the debate on the goals being pursued through decentralisation by domestic elites, with the interests of particular social and political groups dominating instead. Oxhorn suggests elsewhere (2004) that in many cases, decentralisation seems to be promoted as much because of policy failures of the central state as for any clear reasons for suggesting that decentralised systems are intrinsically better or less likely to fail. “It is as if decentralization were the default option when no other viable alternatives were present” (2004:13).

2.4.5 Decentralisation, New Public Management and Neo-liberalism

Whether coincidentally or not, decentralisation appears to have emerged as a highly topical factor in governance more or less simultaneously with the notion of New Public Management (“NPM”). It would be useful to dwell briefly on NPM in the context of decentralisation, as there is sometimes a tendency to equate the one with the other, and to assume that the forces which drive one are the same that drive the other. Decentralisation and NPM represent different concepts; the former is a politico-administrative and constitutional paradigm; the latter is somewhat more difficult to categorise, but for

present purposes, it may conveniently be termed a management doctrine. The existence of a decentralised system in a particular country does not presuppose the existence of NPM in that same country, or *vice versa*; indeed, the demands of one may well contradict those of the other. Yet, they are phenomena which have occurred virtually across the globe; they are often both encountered in the same context; they emerged into the spotlight in roughly the same era; and they have been introduced in constitutional and administrative systems usually (but, apparently, not always) with a view to achieving certain purportedly beneficial outcomes.

Most writers recognise in NPM the emphasis on management skills; on output; on an intendedly more competitive basis for providing public services; on variable rewards; on privatisation; disaggregation and unbundling; on contracting-out and the like. NPM became a convenient term for a set of broadly similar administrative doctrines or management approaches which dominated the public administration reform agenda in many countries (especially within the OECD) from the late 1970s (Hood 1991; Larbi 1999). NPM supposedly promotes operating principles based on efficiency, quality, flexibility, competition and management-by-contract. It promotes new structures designed to facilitate client / contractor splits, the decentralisation of provider units, “consumer” choice, and feedback, and service monitoring (Lowndes 1997). It also recasts political decisions about the distribution of resources as technical management decisions, and defines citizens as customers, thereby changing the nature of engagement from state provision to user-based market principles (McLennan 2008).

It is perhaps not surprising, therefore, that NPM has become associated with neo-liberal ideology; and inasmuch as decentralisation is also regarded as a way to achieve efficiencies, promote responsiveness, promote innovations in administration and enhance local government administrative capability, it is likewise not surprising that there is perceived to be a connection between decentralisation and neo-liberalism. Niksic (2004), for example, argues that it is quite apparent that administrative and fiscal decentralisation have links to neo-liberalism. Many of its principles and guidelines, he argues, are in line with neo-liberal prescriptions to make local government more streamlined and flexible, and decentralisation implies that local governments should not be a “financial burden” or

an obstacle to the flow of capital at the local level. Niksic acknowledges that this approach is correct in emphasising the importance of local governments keeping their finances in order, but suggests that it often forgets the plight of the poor masses. The costs of services are to be borne by the users and the inability of the poor to pay for basic services, according to Niksic, is not treated as a major issue. Furthermore, full-scale privatisation is acceptable to many proponents of administrative and fiscal decentralisation. It is submitted, however, that these are not necessarily objectives or even consequences of decentralisation. As we will see, decentralisation has many objectives, but the principal aim of decentralisation is to bring responsive, participative and efficient government closer to the people. Disregard for the poor, widespread privatisation and mass contracting out of local government functions to private enterprise are not necessary concomitants of decentralisation, and whilst they may in many cases be viewed as consequences of NPM, it is submitted that it is inappropriate to suggest that these are part and parcel of decentralisation.³²

There is a tendency to view NPM and decentralisation as being one and the same thing, or at least going hand-in-hand. This tendency in turn perhaps leads, in the views of some observers, to decentralisation being inextricably linked to neo-liberalism. This, it is submitted, is unfortunate. Whilst decentralisation and NPM often coexist in particular systems, and whilst decentralisation and neo-liberalism are not incompatible, they are not one and the same thing and care should be taken not to conflate them.

³² South Africa provides an example of the use of a decentralised model of local governance to promote a developmental agenda, which requires that municipalities structure and manage their administration and budgeting processes to give priority to the basic needs of the community, and to promote the social and economic development of the community (Section 153 of the Constitution). It is true also that the South African policy and statutory framework does contain strong elements of NPM - for example, contracting out and public-private partnerships; these were no doubt incorporated with a view to promoting efficiencies. But the presence or absence of these NPM elements would not in itself alter the decentralised character of the framework.

2.4.6 *The Role of International Organisations*

Given that the role of certain international organisations – and in particular, those of the International Monetary Fund and the World Bank – in the decentralisation process has been the focus of much ire from certain quarters,³³ it is appropriate to devote further attention to this role. As conservatively inclined governments (which were seen as anti-public sector and pro-market) came to power in the United Kingdom and the United States in the late 1970s, the emphasis within the IMF and the World Bank – coincidentally or otherwise – shifted towards one of a less centrist character. The shift was to have a profound influence on the reforms that developing countries in crisis were to undertake in the 1980s and 1990s under the auspices of these two institutions (Larbi 1999).

The IMF and the World Bank imposed stabilisation and structural adjustment programmes, with their accompanying conditionalities, on countries seeking to obtain credits and debt rescheduling arrangements as an instrument to encourage states in financial crisis to embark on reforms that were pro-market and pro-governance.³⁴ Good governance came to be seen by most donor and other international organisations as a necessary precondition for growth and poverty reduction; and democratic decentralisation was seen as one of the key elements of good governance (Olowu and Wunsch 2004). Stabilisation and structural adjustment programmes provided the motive for reforms in public sector management in most developing countries, in transitional economies in Eastern Europe and the former Soviet Union and, in the newly industrialised countries of Asia (Larbi 1999). The perhaps inevitable result was that decentralisation became firmly entrenched as a feature of modern governance, and took on a level of respectability that

³³ See, for example, Bond (2000) who writes that “as the Third World debt crisis mounted early in the 1980’s, the (World) Bank and the IMF stepped in to ‘manage’ the external debts – and government policies – of countries in Southern Africa, as they did elsewhere in the world. However, this did not solve – but instead deepened – the debt. The Bank and the IMF continued to squeeze whatever they could from our countries...Utilizing such indebtedness as a weapon, the IMF, the Bank and other Northern creditors compelled country after country in Southern Africa to implement structural adjustment programmes under their aegis”(158).

³⁴ Again, it must be emphasised that whilst pro-market and pro-governance reforms were both on the agenda of international organisations, the two types of reform are distinct.

made it attractive to countries seeking a constitutional model, even to those which were not subject to pressures from international organisations.

2.5 Decentralisation and Governance

Decentralisation is, we are frequently told by its proponents, largely about governance. The term “governance” is an old one (Lee 2003); for a long time, it had a somewhat obscure dictionary existence, but, according to Doornbos (2003), it became prominent in international aid circles around 1989 or 1990. “All at once, the notion of good governance was there, referring to the way in which cities, provinces, or whole countries were being governed...Moreover, with the adjective ‘good’ added to it, it became unmistakably clear that that the concept of good governance could invite judgment about how a particular country, city or agency was being governed” (Doornbos 2003:4).

It is perhaps not coincidental that the popularisation of the term occurred around the era – the 1980s - in which donor agencies began attaching certain conditions for the granting of development aid, which often involved adopting principles of decentralisation. It now was apparently considered appropriate and justified to set prescriptions for the manner in which client states managed their affairs (Doornbos 2003; Halachmi 2005). Reducing many developing countries’ state systems and reducing their political weight became a key element in the thinking of global institutions. What was needed, however, was a new standard or criterion, and this is where the notion of good governance came in; it was broad enough to incorporate notions of public management as well as political dimensions, “while at the same time vague enough to allow a fair measure of discretion and flexibility in interpretation as to what ‘good’ governance would or would not condone” (Doornbos 2003:7).

The concept of “good governance” is surprisingly difficult to pin down. A definition of “governance”, unqualified by any adjective, which bears the approval of the United Nations, is “the exercise of economic, political and administrative authority to manage a

country's affairs at all levels. It comprises the mechanisms, processes and institutions through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations and mediate their differences" (United Nations Development Programme 1997). The European Union Governance White Paper (Commission of the European Communities 2001:8 footnote 1) defines governance as "rules, processes and behaviour that affect the way in which policies are exercised ...particularly as regards openness, participation, accountability, effectiveness and coherence". The World Bank defines it as "the manner in which power is exercised in the management of a country's economic and social resources (1992:3).³⁵ Each of these definitions seems to be adequate and uncontroversial enough.

As Doornbos suggests, it is when the adjective "good" is added to the term that one struggles to find consensus as to the core meaning, and less of a common idea as to how to apply it concretely. The term "hardly carries a specific meaning. Rather, its intrinsic open-ended quality, vagueness, and inherent lack of specificity have tended to generate a good deal of searching and debate as to what its proper meaning is or should be, prompting multiple efforts to appropriate it and define it in particular ways" (Doornbos 2003:5).

It is difficult to establish exactly when "decentralisation" became a commonly used term, but its emergence probably preceded the flourishing of the term "good governance," if Doornbos' view is accepted. It is tempting to conclude that the latter term became appropriated as an overarching concept to accommodate what was being sought to be achieved by the application of principles of decentralisation, with the result that good public management and administration with emphasis on accountability and responsiveness was seen as an aspect of good governance by donor agencies (Larbi 1999).

We are presently concerned with a particular variant of governance, namely, local governance, which is a rule-governed mechanism through which "residents of a defined

³⁵ According to Kooiman, for the World Bank the concept of governance is "the essence of broadening its traditional capacity-building scope to a base in which there is room for civil society and participation as well. Building a pluralist institutional structure...can be seen as one of the key contributions to this shift in the World Bank's policy approach" (Kooiman 1996:8).

area participate in their own governance in limited but locally important matters” (Olowu and Wunsch 2004:4), and are the principal decision-makers in what their concerns are, how to prioritise and respond to them, and how and where to obtain resources to deal with such concerns.

Decentralisation and good (local) governance are not one and the same thing. Nonetheless, many of the elements of “good governance” have parallels in the concept of decentralisation. It has been said of decentralisation that it is fundamentally a strategy for improving governance (Campos and Hellman 2005), and it is submitted that this is how the relationship between decentralisation and good governance should best be viewed: the first is a tool or component of a strategy for achieving the broader objective of good governance as conceived above. As Olowu and Wunsch (2004) point out, decentralisation reforms make sense only if they lead to a working political outcome, namely, effective local governance. In their analysis, we are by implication therefore concerned with a two-stage process: the first stage consists of “decentralization, which is a lengthy and complex process of reform which begins with constitutional and/or statutory changes at the center, (and which) ideally progressively distributes responsibilities, resources, authority and autonomy from center to periphery,” and the second is local governance, which is “the situation which obtains when localities are able effectively to manage their public affairs in a way that is accountable to local residents” (Olowu and Wunsch 2004:2).

2.6 Concluding Remarks

That decentralisation is one of the most widespread politico-administrative phenomena in recent years cannot be doubted. It is clearly a complex process and one whose driving forces appear to be many and varied. It is also clear that the implications of applying the principles of decentralisation in particular countries have not invariably been thoroughly considered, and it would appear that in a number of cases, those principles have been adopted without much reliance being placed on evidence to support the conclusion that the outcomes would necessarily be beneficial. What are the expected beneficial outcomes

of decentralisation, and what stands in the way of achieving those outcomes? These issues will be considered in the next chapter.

Chapter 3

Literature Review: Decentralisation - Objectives and Obstacles

3.1 Purpose of Chapter

The purpose of this chapter is twofold. In the first place, it is to examine the expected outcomes of the process by reviewing the literature on decentralisation insofar as it relates to the objectives underlying decentralisation. The second objective is to examine the obstacles which may be encountered in the decentralisation process.

3.2 Objectives of Decentralisation

3.2.1 A Range of Desirable Objectives

A wide range of possible objectives is discussed in the literature, and the list of objectives of decentralisation is potentially endless. This section focuses on those (several of which are interrelated) which are more commonly encountered, and are generally considered to be desirable, as follows:

(i) Promoting Democracy: It has been said that local governments are a training ground for democracy, whilst at the same time, provided that they are sufficiently strong, they can control the natural tendency of central governments to become all-powerful (Prud'homme 1989). Similarly, it is argued that decentralisation helps to deepen and consolidate democracy by devolving power to local governments (Diamond and Tsalik 1999), and extending representative politics to lower levels.³⁶ Furthermore, it can bring

³⁶ Reddy and Sabelo state that “at a political level, decentralization enables the people to participate in a real and effective way in the management of public affairs. Consequently, decentralization is conducive to local

informal local mechanisms for the management of resources or the resolution of conflicts into the formal political process (Manor 1999).

Examples of democratic practices which may be inculcated pursuant to decentralisation include allowing opposition groups and others with political ambitions, who might perhaps not gain access to the national stage, to play official roles in the local context, thereby easing frustrations; and equipping people with presentation, bargaining and lobbying skills and enhancing collective action potential. An additional benefit is that “authoritarian enclaves” may be eliminated by creating democratic institutions in regions where autocratic forces might have held sway (Manor 1999). There are, however, counter-arguments: for example, it is asserted that only a small number of people can participate directly in local government; and multiple levels of government make it more difficult, not easier, to allocate credit and blame (Treisman 2007).

(ii) Promoting Legitimacy: A second objective, one which flows from the preceding objective, is that decentralisation can stimulate the growth of civil society organisations and prevent widespread disillusionment with new policies from turning into a rejection of the entire democratic process, thereby boosting legitimacy by making government more responsive to the needs of citizens. This implies that local institutions, if made relevant to the daily lives of citizens, will have a positive effect on how those citizens view their larger political system (Hiskey and Seligson 2003). The greater stability which accompanies legitimacy can in turn facilitate economic growth, and can also reduce the need for the state to use coercion to maintain order, and strengthen the state's capacity to play non-coercive roles which foster both development and improved state-society relations (Manor 1999).

(iii) Promoting Public Participation: Participatory democracy is an important objective of decentralisation. It allows citizens the opportunity to make known their preferences and

democracy, which is the real and tangible form of democracy in contrast to the theoretical and quasi-mythical democracy of electoral campaigns and speeches” (1997:578-579).

views to their elected officials who are thereby made accountable for their performance to citizens. It can promote a sense of autonomy in citizens, enhance social order by promoting the legitimacy of the state, and reduce pressures for separatism (Bardhan and Mookherjee 2006).

Goldfrank observes that “at its core, democracy means that it treats citizens equally and that citizens have equal rights to participate in government” (2007:148), and whilst acknowledging that the holding of periodic elections for representatives is the established form of realising these ideals, he maintains that deepening democracy³⁷ requires further steps towards strengthening citizenship and democratising the state: “Strengthening citizenship means transforming residents from passive subjects in dependant relationships with particular politicians or parties into active citizens who know they have rights and can legitimately make demands on government” (2007:148). Public participation mechanisms are essential for this purpose. By bringing government closer to the people, decentralisation creates the environment which allows for the establishment of mechanisms for communicating needs and preferences to the local authority; and provides a means to keep them informed, including in regard to services, budgets, plans and the actions of local government officials (Kearney 1999; Bardhan and Mookherjee 2006).

A frequently cited condition for the success of decentralisation, and one that is of particular concern in the context of public participation, is that the citizenry should be politically aware and educated, and that civil society should be vibrant and inclusive, and capable of engaging effectively with local government. Similarly, the citizenry should be well-informed and to that end, they should have access to reliable information channels (Manor 1999; Bardhan and Mookherjee 2006; Devas and Delay 2006; Kauzya 2007; Goldfrank 2007; United Nations Development Programme 2003). Bardhan and Mookherjee (2006) do, however, point out that the assumption that there is the requisite

³⁷ “Deepening democracy does not entail participations of all levels of government, nor does it mean that representative democracy is replaced. Rather, it implies that citizens have more opportunities to participate than the occasional election” (Goldfrank 2007:149).

level of literacy and political awareness among citizens may be unrealistic for many poor countries.

(iv) Promoting State Capability: Public participation is viewed as being valuable for its own sake. But it is also promoted as a means of improving state capability. The reasoning is that when citizens can express their opinions and press their demands publicly within a legal framework, the state acquires the credibility it needs to govern well. Furthermore, popular voice can reduce information problems with lower transaction costs. And finally, since state officials cannot anticipate all the services that citizens desire, public participation can back NGO's in exerting useful pressure on government to improve the delivery and quality of public services (World Bank 1997).

(v) Promoting Developmentalism: The ideal state is often characterised as being not only democratic but developmental as well (Saito 2008). The main characteristics of a democratic developmental state include broad-based participation; growth with redistribution; pro-poor policies; and responsiveness. Often decentralisation is considered to be the most desirable means of achieving such an ideal state, by virtue of local governments being in close proximity to the people and therefore they are in a more suitable position than the central government to provide the public services people desire (Saito 2008).³⁸

(vi) Promoting Demand Efficiency: A widely shared view is that decentralisation is not only important for the sustenance of democracy, but is also generally viewed as desirable for the efficient supply of public services and essential for improvement in the efficiency of the public sector. In this regard, it may be said that decentralisation accords with the

³⁸ The promotion of developmentalism is of particular interest in the South African context. Section 153 of the South African Constitution expressly places developmental duties on municipalities. See de Visser (2005) for a discussion on developmentalism and decentralisation in South Africa.

traditional theory of federalism which holds that centralised governments are incapable of achieving the differentiation necessary to cater to the diverse needs and preferences of heterogeneous communities. This is due either to the high costs of communicating information concerning local preferences to a central government, or an inability of the central government to process such information and utilise it in its decision-making process in regard to the delivery of local public goods. By contrast, or so the argument goes, local government officials are likely to be better informed about the preference of local citizens and thus exhibit greater responsiveness to heterogeneous needs (Bardhan and Mookherjee 2006),³⁹ or to recognise the asymmetries in tastes and to provide appropriate responses (Asthana 2003).⁴⁰

(vii) Promoting Supply Efficiency: The objective of promoting supply efficiency is based on the argument (which we have already encountered) that, local government being closer to the people, it is more likely to run public service projects in the interest of the stakeholders.⁴¹ Here it is argued that locally financed and provided services will be produced at a lower cost. “Time will be saved, local resources will be used, responsibility and oversight will be exercised, and as a consequence, costs will be lowered relative to what they would be if the same services were provided by the central government” (Prud’homme 1989:72).

³⁹ To put it differently, “there is an assumption that the demand for local public services varies from place to place, because tastes and willingness to pay differ, for geographic, cultural, ethnic, historic reasons. If this is the case, the central provision of local public services...is likely not to please anybody...Only the decentralized provision of local services will adjust to the many-faceted demand. It will result in every local government providing a different level and a different bundle of public services” (Prud’homme 1989:71).

⁴⁰ Asthana makes an astute observation on an issue which is usually overlooked by writers on the subject: “Looking from the side of the demand efficiency, in developing countries the hypothesis on which this classical model rests is fragile. In the developing countries, the fine difference in preferences (for example, parks versus swimming pools) is not the issue. The main issue is the satisfaction of basic needs” (Asthana 2003:148).

⁴¹ Whilst Asthana is not persuaded by the arguments in favour of demand efficiency, he is more accepting of those regarding supply efficiency: “From the supply efficiency side, few scholars have challenged the validity of the decentralisation approach. Even those who have raised doubts are of the view that while the provision of infrastructure could be centralised, maintenance should be decentralised because the local governments have comparative advantages in terms of information and incentive” (Asthana 2003:148).

(viii) Promoting Competition: The World Bank asserts that “decentralized service provision can also enhance efficiency and interjurisdictional competition in supply, providing consumers (at least in theory) with the option to exit to other jurisdictions” (1997:121) and suggests that that can have the effect of “stimulating competition between levels of government (1997:122). That competition among jurisdictions can enhance governance has been cited an important justification for decentralisation. The rationale is simple: officials who are corrupt or wasteful or ineffective relative to those in other regions will lose residents and businesses, thus reducing the tax base. Given the mobility of capital not only among countries but also within countries, businesses tend to prefer jurisdictions where they are not subject to excessive taxation, where infrastructure is sound, and trust relationships with local officials can be developed. This is seen as having a disciplining effect on local governments, strengthening their incentives for delivering transparent and accountable governance (Campos and Hellman).⁴² Manor is, however, dismissive of the competition argument and states that the main gains of decentralisation “arise not from competition, but from cooperation between levels in decentralized systems” (Manor 1999:11; see also Manor 1999:70). In similar vein, Treisman suggests that the conditions for vigorous competition amongst local governments are “so restrictive that they will rarely be met even approximately in real countries” (2007:12).

(ix) Reducing Corruption: One of the most pressing problems associated with a centralised system is corruption among centrally appointed bureaucrats who have authority over service delivery in local areas.⁴³ One of the presumed arguments in favour

⁴² Campos and Hellman state that “The case for decentralization is fundamentally an argument about governance. The case is rooted in two powerful intellectual traditions: the critique of economic centralism (especially central planning), and the perceived economic advantages of federalism. The first tradition posits that decentralization aligns government decision making more closely with local preferences, largely because of the information advantages associated with smaller jurisdictions. The second tradition emphasizes the competition among regions sparked by decentralization, as local governments have incentives to engage in a ‘race to the top’ to attract capital and labor, or simply to build their political reputations”(2005:237).

⁴³ “While systematic empirical evidence on corruption is scarce for obvious reasons, there are innumerable case studies of high rates of corruption among government bureaucrats in the process of delivering public services” (Bardhan and Mookherjee 2005:675-704).

of decentralising the delivery system is that local governments are subject to electoral pressures from local citizens who are better placed to monitor delivery than is a distant central authority. Bribery and other corrupt practices will be more readily noticed by local residents who suffer the immediate consequences of such conduct. It is presumed that residents are then likely to be motivated to remove such government officials from office, and also apply social sanctions. This in turn has the potential to enhance accountability in the delivery process (Bardhan and Mookherjee 2005).⁴⁴

(x) Improving Communications: It is argued that decentralisation has the potential for making people more aware of government policies, and better able to differentiate between those which are beneficial and those which are not, by enhancing transparency and enabling large numbers of people at lower levels in the political system to monitor how decisions on how resources are made. It also facilitates the flow of information (including discontent about policies) from people at lower levels to the upper reaches of government.

By making available information regarding financial and capacity constraints, and thereby tempering unrealistic expectations and protecting political systems from the severe backlashes that can occur when inflated expectations prove to be unfounded, decentralisation can assist in promoting political realism, political stability and a state which is in many ways stronger than in the days of centralised governance.

(xi) Defusing Conflicts: Finally, it is argued that decentralisation defuses conflicts – particularly in the ethnic context – by providing autonomy (albeit limited), allowing group ambitions to be fulfilled to some extent, dividing the prizes and lowering the stakes of politics; it can also place checks on a central government which is dominated by one group. But as Treisman (2007) points out, decentralisation might not be that beneficial for that purpose; for example, decentralisation can help only geographically concentrated

⁴⁴ Whether the anti-corruption cause is better served by a decentralised system than a centralised system is open to debate. This argument presumes that the local population has the courage to eject corrupt officials.

minorities; and whilst distributing political offices amongst different groups avoids excluding them, it can turn ethnic conflicts into ethnically-motivated inter-governmental conflicts.

3.2.2 *Other Objectives*

Manor (1999) asserts that decentralisers have often proceeded both on the basis of statesmanlike considerations, seeking genuine empowerment, and on the basis of hard-nosed calculations of self-interest. The objectives discussed in the preceding subsection might be included in what he categorises as “genuine attempts at empowerment.”⁴⁵ On the other hand, a number of objectives may be said to be of a narrow or partisan character. Included amongst these are democratising lower levels in the political system as a substitute for democratisation at the apex; off-loading tasks which the central government finds costly or inconvenient, or both, onto sub-national authorities; and giving the appearance of democratising lower levels in the system, while actually limiting the influence of elected members of authorities to such an extent that what mainly occurs is deconcentration, which strengthens the central government's power.

3.3 **Obstacles faced by Decentralisation**

3.3.1 *A Difficult Process, with no Guarantees*

Decentralisation has become one of the dominant themes in the discussion on governance in recent decades, particularly insofar as it applies to developing states and the international development community. Nonetheless, the shifting of powers and decision-making, allocative, and implementation functions from the national to local governments has proven to be difficult. The good intentions of decentralisation are acknowledged by

⁴⁵ Manor provides an extensive list of objectives of decentralisation which he describes as “genuine attempts at empowerment.” See Manor 1999:37.

most, but whether such intentions can actually be realised in the harsh realities of the day, especially in developing countries, is another question (Heller 2001).

According to the World Bank, decentralisation itself is neither good nor bad, and it should be viewed as a means to an end, often imposed by political reality. “The issue is whether it is successful or not. Successful decentralization improves the efficiency and responsiveness of the public sector while accommodating potentially explosive political forces. Unsuccessful decentralization threatens economic and political stability and disrupts the delivery of services” (World Bank 1999:107). And perhaps more bluntly, USAID declares that “Decentralization is about potential; it guarantees nothing” (US Agency for International Development 2000:8). This is a somewhat alarming conclusion, given the vital importance which, if the World Bank is to be believed, is attached to the success of decentralisation.

3.3.2 *Is Decentralisation Working?*

Despite the prevalence of decentralisation in recent years, there is a degree of scepticism about whether the vaunted benefits of decentralisation have been, or will be realised,⁴⁶ particularly because of the evident weaknesses of local level democratic processes in so many countries. There has been little in the way of systematic research covering the full range of the dimensions and objectives of decentralisation, and it is difficult to make an assessment of the effectiveness of decentralisation as a process, but an examination of such empirical evidence as there is on the success of decentralisation policies is at best mixed and sometimes contradictory (Devas and Delay 2006; Oxhorn 2009). There are several showcase successes,⁴⁷ but there are also several far less successful experiences.

⁴⁶ Manor, writing in connection with the question of the utility of decentralisation as a force for poverty reduction, states that “academic analysts... fall into two main camps – those who are distinctly pessimistic about decentralisation’s capacity to reduce poverty and others who are only somewhat pessimistic”(2006:287).

⁴⁷ Such as Porto Alegre, in Brazil. This example is used in several studies as an example of a successful attempt at decentralisation. See, for example, Heller (2001), Goldfrank (2007) and Oxhorn (2009). Porto Alegre’s success derives largely from its experiment with participatory budgeting. Tendler’s research on the Ceará region, also in Brazil, found that there were improvements in local government but concluded that

As examples of successes, some analysts have offered evidence to suggest that decentralisation, when it works well, tends to enhance transparency, accountability and responsiveness of government institutions; this in turn increases the legitimacy of government, reduces apathy, and improves popular participation; this in turn improves the quality of governance (Manor 2006). On the other hand, other research on this aspect of decentralisation is less optimistic, with one study showing that in underdeveloped countries, decentralisation is actually associated with a poorer quality of governance (O'Dwyer and Ziblatt 2006).⁴⁸ In another study, it was found that the most significant effect of political decentralisation was its detrimental effect on the ability of the poor to engage in collective action, due to the fact that decentralisation spreads scarce organisational resources (Schneider 2006).⁴⁹ Research by Hiskey and Seligson (2003) also shows that, improperly applied, decentralisation can have the undesired effect of producing more negative views of the political system. Decentralisation also presents pitfalls for economic performance, according to the World Bank (1997), such as budgetary and inflationary pressures, macroeconomic instability induced by uncontrolled borrowing by sub-national governments, disparities and inequalities in service provision, and resource misallocation. One of the most frequently cited objectives of decentralisation, namely, the promotion of efficiency due to government being closer to the people, has also been called into question (Asthana 2003; Bardhan and Mookherjee 2006). Decentralised systems may also be susceptible to corruption (Asthana 2003).⁵⁰

these were “less the result of decentralisation than they were of a three-way dynamic among local government, civil society and central government” (1997:145).

⁴⁸ O'Dwyer and Ziblatt attach a particular meaning to “governance” for purposes of their research: “Our concept of ‘quality of governance’ is a shorthand term for what we consider to be two important measures of how well government does its job: efficiency and effectiveness” (O'Dwyer and Ziblatt 2006:327).

⁴⁹ It must be emphasised that Schneider is referring here only to *political* decentralisation. His findings on administrative decentralisation are somewhat more optimistic: “The positive relationship between administrative decentralisation and social spending is consistent with literature that suggests administrative decentralization promotes competition, information, and innovation in government. For example, administrative decentralisation may create a more efficient state that can free resources to be used for social spending” (Schneider 2006:364).

⁵⁰ This despite the reduction of corruption being one of the purported objectives of decentralisation.

In summary, despite decentralisation being generally viewed as a desirable process, significant difficulties are associated with decentralisation. It is useful to examine the more prominent challenges to any decentralisation process, the better to understand and guard against consequences which would otherwise not be anticipated. As is the case with objectives of decentralisation, the challenges to decentralisation are many and varied; some of the more common challenges are discussed below.

(i) Uninterested, Inertia-bound and Overwhelmed Governments: One of the primary challenges to the implementation of the decentralisation process lies with central government. A number of writers point to the need for central government to have the political will and capacity to drive the decentralisation process and entrench it. In addition, they point out that the bureaucracy of central government must be ready and willing to facilitate the process of transferring power, authority, functions, responsibilities and the requisite resources. It requires politically orchestrated action from above. Heller (2003) demands that “Powers must be shifted, monies devolved, laws and regulations promulgated, and groups opposed to decentralization—recalcitrant bureaucrats, opposition parties, patronage politicians—circumvented or neutralized. Decentralization requires the agency of a programmatic, ideologically cohesive political party that has significant ties to grassroots organizations” (2003:14). Decentralisation will be “hard to pull off” (World Bank 1997:128) where there is weak central government capability to manage national fiscal and monetary policy and to enact and enforce appropriate rules for intergovernmental relations, and commitment from the centre to effective local governance is essential (Devas and Delay 2006).

It also implies that central governments must be willing to relinquish power, and must have the political will to engage in shared exercise of power and authority (Kauzya 2007). It has been noted that there is a tendency amongst actors at the centre of government to try to retain authority and resources; once such authority and resources have been transferred to local governments, central government might try to recapture them – frequently, although not always, successfully (Wunsch 2001). Often these endeavours are aided by the fact that legislation permits agencies of central government to override local authorities. Or, local authorities may be so poorly resourced or so poorly designed that

breakdown is inevitable. These, and a host of other similar factors, can lead to a *de facto* “recentralisation” process (Wunsch 2001).⁵¹

One of the causes underlying these challenges this is said to be that most states (or more particularly, those who control them) have little interest in decentralisation, because “to move the locus of public authority is to shake up existing patterns of political control and patronage” (Heller 2001:135). Another is that central governments often fall victim to inertia, particularly in developing states. A third cause is that even when there is a commitment to decentralisation, the task at hand is enormous: a wide-ranging legislative programme – often at constitutional level - is needed to incorporate the precepts of decentralisation; regulations have to be passed to implement them; personnel have to be appointed and trained; resources have to be rechannelled, and local administrative capacities have to be built up. In short, an enormous amount of institution-building and training must take place before local government can work effectively (Heller 2001).⁵²

Heller’s views tend to support the World Bank’s contention that “decentralization is often implemented haphazardly. Decision makers do not always fully control the pace or genesis of the decentralisation process. Even when they do, models of decentralization are often exported from one country to another without regard for local political traditions, regulatory frameworks or property rights” (World Bank 2000:107).

(ii) Intergovernmental Tensions: A further challenge is that which arises from intergovernmental tensions. We have seen that decentralisation is largely about rearranging intergovernmental relationships. Campos and Hellman (2005) point out that decentralisation very often remains contested terrain between levels of government for

⁵¹ Writing in the context of African decentralisation, Wunsch observes that four functions – planning and capital investment, budget and fiscal management, personnel systems and management, and finance and revenue – are critical for effective local government. “At the same time they are areas where substantial resources are distributed and where, given the intense competition for resources generally accepted as typical of African states...one might expect substantial competition from actors in these states to retain or capture those resources” (Wunsch 2001:278).

⁵² Tendler (1997) refers in the context of her research to the “paradox of decentralisation” identified by Hommes - this refers to the fact that decentralisation “demands more centralization and more sophisticated political skills at the national level” (Hommes 1996:331).

prolonged periods. This results in a lack of cooperation between levels of government. It also results in lines of accountability being blurred. This in turn can reduce the responsiveness of local governments and weaken their authority over service providers, who may be responding to incentives from national hierarchies. Also, contests often lead to “imbalanced decentralisation,” especially between power and financial responsibility, distorting incentives at lower levels. For example, local governments might have considerable control over expenditures, but little control over the civil servants who provide those services; the result is that they cannot downsize the workforce, alter remuneration packages, or control recruitment and promotion. These factors generate substantial uncertainty regarding the distribution of functions and responsibilities, the extent of autonomy, and the balance of power between levels of government; the resultant uncertainty weakens accountability at every level, as it affects the expectations of all participants in the framework (Campos and Hellman 2005). Related to these issues is the ever-present jealousy of national government over its powers; it reluctantly gives them up in the process of decentralisation, and then expends much energy in trying to claw them back, which results in sub-national governments being undermined (Manor 1999; Campos and Hellman 2005).

(iii) Elite Capture: A number of case studies have been undertaken which show that development programmes have been undermined by capture of local governments by powerful local elites who divert and distort public programmes to benefit themselves at the expense of poor minorities.⁵³ A major cause of local capture is to be found in lower levels of political awareness⁵⁴ of the poor,⁵⁵ with the extent of capture of a local

⁵³ Bardhan and Mookherjee (2005) suggest (at 677) that it was concerns about capture which led Madison, as long ago as 1787, to argue for the retention of powers at federal level.

⁵⁴ “While we are not aware of any evidence concerning variations in political awareness with respect to income or education status in developing countries, it seems plausible that acquiring and processing information is costly and time-consuming for the poor who are resource-constrained, illiterate, and overworked” (Bardhan and Mookherjee 2005:683).

⁵⁵ The text from which this excerpt is taken reads “...lower levels of political awareness of the *nonpoor*.” This is assumed to be a typographical error and that it was intended to read “...lower levels of political awareness of the *poor*.”

government is likely to be higher in communities with a higher poverty rate (Bardhan and Mookherjee 2005).

All units of government are subject to elite capture, but there is evidence that local units are more susceptible to it;⁵⁶ the lower the level of government, the greater is the extent of capture by vested interests. Khan states the problem as follows:

“The smaller the society, the fewer will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing the majority, and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression” (Khan 2008: 512).⁵⁷

The World Bank (2001) also warns that of the many caveats concerning decentralisation, the most important is that it can bolster the power of elites in settings with highly unequal power structures. This domination or capture by elites may result in less responsiveness of local governments to the needs of the people, especially of poor people.

(iv) Clientelism: Clientelism occurs when politicians distribute publicly funded goods to selected members of the electorate in return for votes and political support. According to Campos and Hellman (2005), it weakens political accountability by narrowing the range of constituents to whom politicians are responsive. By the process of withholding goods and services, clientelism also gives politicians a mechanism to punish voters who do not provide continuous support. It also creates disincentives for groups to develop collective forms of representation and therefore weakens interest group competition. Clientelism is

⁵⁶ See Khan 2008: 512, and the studies referred to therein.

⁵⁷ See also Campos and Hellman (2005). They find that such empirical studies as there are suggest that local governments are more susceptible to capture than their central counterparts. This is because capture thrives in an environment where highly concentrated interest groups dominate the market for influence; because many of the institutions normally expected to serve as checks and balances are weaker at the local level; and because “countervailing powers” representing a broader range of public interests such as the media and interest groups are generally less developed in local jurisdictions.

common to many different types of political systems and at all levels of government, but it may be more pervasive at the local level, for several reasons. In the first place, in smaller jurisdictions, local politicians are more likely to engage in clientelist forms of “retail” politics to win elections and maintain political support networks. Second, politicians can more effectively identify individual voters for clientelist networks and more easily monitor their political support. Third, local clientelism rearranges the relationships between policy makers, providers, and clients, so that instead of citizens holding local officials accountable, “clientelist politics allows politicians to shape constituencies to their own advantage by selectively providing public services and other benefits” (Campos and Hellman 2005: 241). Clientelism also has the capacity seriously to exacerbate inefficiencies and inequalities in public service: a tendency in clientelist politics is to favor investments that generate jobs, which politicians can then distribute to build patronage networks (Campos and Hellman 2005).

(v) Capacity Constraints: Lack of capacity is often identified as a serious challenge. The World Bank (2000) is emphatic about the need for local capacity: “Even a well-meaning political team cannot overcome incompetent administration. In fact, lack of capacity at local level and the need for a massive increase in skilled staff are the arguments most frequently invoked against decentralization” (World Bank 2000:122). Campos and Hellman (2005) point out that decentralisation can amplify capacity constraints, and that the shifting of responsibilities of local government from purely implementing policy to both formulating and implementing policy demands a wider range of skills and experience, which local politicians and bureaucrats may be lacking and have to develop. This means that at least initially, local skill levels and policymaking processes are likely to lag. In addition to skills and processes, appropriate management systems such as accounting, budgeting, procurement, tax administration, auditing, reporting, and personnel management will be needed. In many developing countries, the reforming of these systems presents an enormous challenge to their central governments; and given their relative inexperience and more modest resources, local governments are likely to find this an even greater challenge. Resources are often a forgotten or underestimated

aspect of capacity. To train personnel, develop systems and processes, strengthen accountability, and ultimately deliver public goods and services, local governments need funds. And these, from whatever source, are often misapplied. The result is that local governments are often severely hamstrung and incapable of operating at any but the most basic level (Campos and Hellman 2005).

(vi) Financial Constraints: Funding of local governments is amongst the most pressing of issues arising from decentralisation. Here the primary issue is whether to fund them from central government sources or from locally derived sources. But raising revenue is not the only problem: in most developing countries there are huge problems of local expenditure management (World Bank 2000). This, of course, is inextricably linked to a challenge discussed earlier, that of capacity constraints. Budgets are often unrealistic, relying on inflated forecasts, with the result that arbitrary cuts have to be made, generally in a manner which is not transparent. Weak financial management and accounting skills at the local level are matched by the lack of capacity at the centre to audit local government accounts. This provides enormous scope for abuse, which results in turn in little public trust in the finances of local governments.

(vii) Is Decentralisation even Wanted? And then, of course, there is the question of whether people actually want decentralisation. This is open to question. Asthana (2003) makes the point, so often overlooked, that it is often assumed that the people want decentralisation, while higher levels of government oppose it. Paradoxically, the decisions relating to decentralisation are taken at the central level without consulting the people, and there has never been any referendum to determine what people want. This view is supported by Manor (1999), who maintains that pressure from ordinary people at grassroots level has hardly at all persuaded central authorities to decentralise. Whilst there is some evidence of elites at intermediate level having an impact or of opposition parties lobbying effectively for devolution, there is generally an absence of popular pressure.⁵⁸

⁵⁸ But see Shah and Thompson (2004) who suggest that “a bottom-up process of decentralization entails resident-voters getting organized...and declaring home rule for local public services and asking higher

And whilst enthusiasm may and often does develop after decentralisation takes place that is a different thing.⁵⁹

(viii) What's Wrong with Centralisation Anyway? Finally, there are arguments which suggest that centralisation is in any event superior to decentralisation.⁶⁰ The first such argument is that a centralised system is at least potentially more equitable. Inasmuch as income redistribution is a basic function of government, it is much better performed at the national rather than the local level (Asthana 2003). Furthermore, centralisation makes it possible to equalise levels of publicly provided services over space. Another argument in favour of centralisation is that it makes it easier to conduct macroeconomic policies. The larger the share of taxes made available to local government for expenditure, the more difficult it becomes to use them as instruments of fiscal policy. In addition, it is argued that centralisation might be better for accountability, in that it is easier for central government bureaucrats to resist the pressures of vested local interests. Finally, central bureaucrats are likely to be more competent than their local counterparts, and be less susceptible to corruption (Prudhomme 1999).

3.4 Concluding Remarks

Decentralisation has enjoyed a long period of respectability as the preferred vehicle for promoting a model of inclusive, responsive, effective and efficient governance. It is clear, however, that as a concept, it faces many challenges, some of which have only relatively recently been brought to the fore. Those challenges notwithstanding, decentralisation was

levels of government to be supportive of these efforts. This has been the dominant mode of decentralization in North America and Northern Europe” (2004:21).

⁵⁹ See also Oxhorn (2004).

⁶⁰ Devas and Delay point out that much work needs to be done on implementing the key elements needed for effective devolution in most countries, and “there is a danger that frustration with the practical problems of devolution will result in calls for recentralization” (Devas and Delay 2006: 692); see also Devas (2006).

embraced as a key element in the South African local government framework. The next chapter examines the process of the development of that framework.

Chapter 4

The Local Government Framework in South Africa

4.1 Purpose of Chapter

The purpose of this chapter is to examine the constitutional, policy and legislative framework of local government in South Africa. It deals with the historical background of the legislative framework, the process of the development of the Constitution in the context of local government, the development of local government policy as reflected in of the White Paper on Local Government, and finally provides an overview of the statutes relating to local government which were enacted in response to the demands of the Constitution and the White Paper. The purpose of the discussion is to describe in general terms the framework upon which the decentralised system of local government in South Africa is based; it is not, it must be emphasised, intended to be an in-depth examination of the South African Constitution insofar as it relates to local government. That is a task which has been more appropriately executed elsewhere.⁶¹

4.2 Background

Prior to 1994, each of the then four provinces of South Africa (Cape, Natal, Transvaal and the Orange Free State) enacted its own legislation to regulate local government in its respective geographical area of jurisdiction. Nonetheless, local government reflected the geographic, institutional and social separation that characterised the country as a whole. The policy of apartheid sought, by means of spatial separation, influx control, and a policy of “own management for own areas,” to limit the extent to which white municipalities would bear the burden of servicing disadvantaged black areas (Ministry for Provincial Affairs and Constitutional Development 1998:1). “Own management” structures were introduced at local level, for example, in so-called “Bantustans,” where

⁶¹ See, for example, de Visser (2005).

traditional leaders were given powers over land allocation, and some small rural towns were granted administrative functions; and Coloured and Indian management committees were established as advisory bodies to white municipalities. This resulted in “stark inequality in terms of resources between the racially constituted local government structures” (de Visser 2005:59). The system as a whole has been described as a “weak, illegitimate and entirely non-developmental level of government” (de Visser 2005:60).

In the course of the constitutional negotiations which took place in the early 1990’s, it was agreed to establish a Local Government Negotiating Forum, which represented formal government structures at all levels and also non-statutory structures, led by the South African National Civics Organisation (van Donk and Pieterse 2006). This structure developed a three-phase strategy for the transition of local government.

The pre-interim phase began with the promulgation of the Local Government Transition Act (Act 209 of 1993) in 1994, which provided for the dissolution of race-based municipalities and the establishment of transitional councils, which consisted of members appointed in equal proportions from existing local government bodies and non-statutory bodies. These councils were responsible for local government until elections were held for municipalities in 1996 and 1997.

These elections marked the start of the interim phase. During this period, local government consisted of a number of different institutions, namely a two-tier system of Metropolitan Councils with Metropolitan Local Council⁶² District Councils,⁶³ Transitional Local Councils (which were established in most urban areas), and Rural councils. The interim phase saw the amalgamation of previously divided jurisdictions which led to a massive increase in the populations served by municipalities.⁶⁴

⁶² This two-tier system which was established in the metropolitan areas, providing an overarching authority within which were located several local authorities.

⁶³ These were largely built on the old Regional Services Councils and Joint Services Boards.

⁶⁴ The White Paper notes that this increase in population was not accompanied by a corresponding increase in the tax base. Many municipalities experienced financial stress, which coincided with a loss in experienced finance personnel, which in turn inevitably led to pressures on financial management.

The interim constitution came into effect in South Africa in 1994 (after, it should be noted, the promulgation of the Local Government Transition Act). For the first time, local government was granted a constitutionally protected place in the institutional framework of South Africa. Section 93 of the interim constitution provided that “Parliament or a provincial legislature shall not encroach on the powers, functions and structure of a local government to such an extent as to compromise the fundamental status, purpose and character of local government.” The interim constitution was followed by the final constitution in 1996 (henceforth referred to as “the Constitution”), which is discussed in greater detail elsewhere.

The final phase commenced with the holding of municipal elections in 2000 under a new local government dispensation which had evolved during the pre-interim and interim phases. It is this dispensation which is the subject of this study.

4.3 The Road to Decentralisation in South Africa

It is generally assumed that the new South African Constitution enshrines decentralisation. It is also often assumed that decentralisation is a phenomenon which is new to the South African landscape. In truth, it had been practised, albeit in a rather different form, for years before the advent of the Constitution. Wittenberg (2006) identifies three broad periods of decentralisation prior to the era of the Constitution. In the first period, with the formation of a unitary state in 1910, South Africa had essentially two forms of governance, with a democratic and relatively decentralised system for white South Africans and a much more centralised system for black South Africans. In the second period, the era of “Grand Apartheid,” the state embarked on a social experiment involving the partitioning of the country into separate states based on the “black

Administratively, most municipalities underwent some changes, but many were still “characterised by hierarchical line departments, poor coordination between departments, and authoritarian management practices” (Ministry for Provincial Affairs and Constitutional Development 1998:8).

homelands” or “Bantustans.”⁶⁵ It was a coercive form of decentralisation and, as is well known, led to the social and economic disintegration of large parts of the country. In the final period, it was realised that it would be necessary somehow to include the majority of the people in the system, and to that end, it was deemed necessary to find ways of redistributing resources. The solution involved, on the one hand, centralisation (for example, by the abolition of elected provincial governments), and on the other, the creation of bridging structures that cross-cut existing administrative systems. Such bridging structures were implemented at regional level, with the creation of nine development regions which were intended to facilitate development across the borders of the black homelands, and also at local level, with regional services councils being created to support growing urban townships. The primary function of this form of decentralisation was always intended to be coercive in nature, aimed at maintaining control over the black population (Wittenberg 2006).

The process of constitutional development which led to the 1996 Constitution brought drastic changes. It has been argued by some (for example, Kauzya (2007)) that the decentralised system provided for in the Constitution represents a means of dismantling apartheid, being the product of a “new deal” between the aspirations of the black local communities and the status quo of the white supremacy to implement the agenda of doing away with apartheid for the benefit of everyone” (Kauzya 2007:10).⁶⁶

The road to decentralisation in the form in which it is presently applied in South Africa was not, however, quite as direct as Kauzya suggests. Friedman and Kihato (2004) state that the system originates directly from the nature of the political compromise which was

⁶⁵Friedman and Kihato (2004) argue that whilst it is true that under National Party rule, regional political units existed which had substantial formal powers, they were not regarded in ideological terms as instruments of decentralisation within a single state, but were instead meant to be entirely separate political units.

⁶⁶ “...in South Africa decentralized governance as it stands today was demanded from (*sic*) the grass-root black communities as a way of dismantling apartheid. The consultations about it were to determine what shape it would take and to solicit at least cooperation from the white communities in its decision and implementation” (Kauzya 2007:10). There is little evidence to suggest, however, that decentralisation was demanded from or by any community as a way of dismantling apartheid (It appears that the word “from” as quoted in the first line of this footnote is used in error, and that it was actually intended to use the word “by”).

negotiated in the 1990's and was shaped by the transition from apartheid and by the suspicions that national elites harboured towards local initiatives. Neither the National Party ("NP") nor the African National Congress ("ANC"), which were the principal negotiators in the process, were naturally inclined to the view that sub-national government should enjoy significant powers. The approach of the ANC was somewhat ambivalent, it having embraced the notion of self-government in its Freedom Charter and, by implication, it also embraced the merits of decentralisation, yet it envisioned a unitary state which delegated powers to subordinate administrative units (de Visser 2005). The antiapartheid movement tended to be strongly centralist, and in its view, a strong central state was required to undo the fragmentation wrought by apartheid (Wittenberg 2006). It saw decentralisation as a means of diluting majority rule and retaining vestiges of apartheid, although it has been suggested that its suspicions were directed more towards decentralisation at provincial level rather than local level (Friedman and Kihato 2004). The ANC also argued that only a strong unitary state could effectively combat poverty and inequality (Friedman and Kihato 2004). In time, however, the NP as well as the Inkatha Freedom Party ("IFP") pressed for stronger sub-national governments. The former wanted more authority for neighbourhoods (Oxhorn 2001) as well as strong provincial governments (de Visser 2005), with decentralisation being viewed as a means of limiting the power of an otherwise immovable central government; the latter wanted significant authority for KwaZulu-Natal province (Oxhorn 2001) which was then the IFP's traditional stronghold.

In time, the ANC came around to the view that a decentralised regional dispensation was desirable. The areas which became the nine provinces (largely following the geographical areas of the development regions referred to above) were given "teeth" by being given functions (particularly in relation to social services) in the new Constitution; but at the insistence of the ANC, these would not be exclusively provincial functions. Instead, the central government retained overall policy-making and coordinating functions (Wittenberg 2006). The ANC also eventually made (at least on the face of it) a strong commitment to local government. By 1995, when the negotiations for the final constitution were proceeding apace, it seems that all parties participating in the process

were – at least publicly - largely of one mind about the desirability of a strong local level of government. The ANC's view was that local government should be a feature of the constitution and that it should enjoy the status of a "specific level of government and not merely a provincial function;" the Democratic Party took the view that local government should be understood as a "sphere" rather than a "tier" of government (a concept which was incorporated in the final constitution) and that there should be no predetermined hierarchy amongst the spheres of government; and the NP saw local government as a "fully-fledged level of government" (Constitutional Assembly of the Republic of South Africa 1995). The parties all held views which, to varying extents, recognised the status of local government as not necessarily being subservient to other levels of government. They also all agreed that the powers and functions of local government should be protected by the constitution, although they differed on the details.

The final result was that the constitutional framework which emerged made provision for a decentralised system which, on the face of it, assured the existence of local government as a sphere of government in its own right with full constitutional protection.⁶⁷

The curious thing about the incorporation of a decentralised system in South Africa is that there does not appear to be any explicit motive behind it. It will be recalled from Chapters 2 and 3 that a number of typical motives behind, and expected outcomes of, decentralisation had been identified. Yet none of these motives appears to have been a driving force in the case of South Africa, nor do any of the typical expected outcomes appear to have been foremost on the minds of the parties to the constitutional negotiation process. It is particularly noteworthy that the dominant party in the process, the ANC, was during the greater part of the process at most luke-warm in its enthusiasm for the

⁶⁷ At the second reading debate of the Constitution of the Republic of South Africa Bill, the then Minister of Constitutional Development felt compelled to declare that "Local government is now recognised, side by side with the national and provincial level, as a tier of government in its own right with the full constitutional protection that provincial governments enjoy...What we have done now is to remove local government as a mere competence or functional area of another level of government. Local Government is a level of government in its own right. It is not a function of provincial or national government as such, just as provincial government is not a function of any other level of government, including national government." (Debates of the Constitutional Assembly, 6 May 1996, cols.239-240). As far as the present author can ascertain, not once in the course of the debates in the Constitutional Assembly on the final Constitution, was the word "decentralisation" used in the sense in which it used for purposes of this study.

notion of decentralisation, and often somewhat hostile towards it. The smaller parties were, for various reasons, largely enthusiastic, but they alone would not have had sufficient influence to determine the course of events so unequivocally in favour of decentralisation.

One has, therefore, to speculate as to the reasons for the adoption of a decentralised system. It has been suggested (Wittenberg 2006) that the reason for the ANC agreeing to decentralisation on a provincial basis was that it would provide a means of reining in the national bureaucracy and buying off the Bantustan leaders (who had largely thrown in their lot with the ANC). As far as the acceptance of decentralisation at local level is concerned, de Visser (2005) alludes to three possible reasons for this development: first, the Reconstruction and Development Programme, which was a cornerstone of ANC policy, was linked to and placed reliance on strong local government; second, the civic movement which flourished in the 1980's promoted the notion of a strong local sphere of government; and third, the ANC's aversion to powers being decentralised to provincial governments perhaps made it relatively more palatable to decentralise powers to local government instead – the view perhaps being taken by the ANC that, given the balance of power in the provinces at the time, it would have been easier to influence a strong local sphere of government than a strong provincial sphere.⁶⁸ This last reason does not, however, explain why decentralisation on a regional level was in any event accepted by the ANC.

It may, of course, also be possible that the adoption of a decentralised model was motivated by a genuine desire to enhance public participation and to improve service

⁶⁸ Friedman and Kihato, however, maintain that “enthusiasm for local government was more rhetorical than real”(2004:157), this despite the role played by the civic movement. This was said to be due to the fact that the civic movement was at all times an integral part of the broader anti-apartheid struggle and its members mostly supporters of the ANC. “This meant...that the fight for local decision-making power was always a means to an end – the defeat of apartheid - and that as the achievement of that goal neared the expression of local power receded into the background, dwarfed by the far more pressing goal.” Furthermore, the civic movement was always “a loyal servant” of the national movement and was disinclined to challenge national leaders when local prerogatives were threatened.

delivery; or because it was seen as a means of reunifying the country;⁶⁹ there is, however, little to suggest that these objectives were foremost on the minds of decision-makers.

There is perhaps yet another reason. It will be remembered from Chapter 3 that the wave of decentralisation which swept around the world was particularly strong at the time; it is not inconceivable that, prompted by the fashion of the time, and perhaps encouraged by agencies which had decentralisation as an agenda, or by other states which favoured decentralisation and were able to influence events in South Africa, it was inevitable that South Africa would adopt a decentralised approach.⁷⁰

4.4 The New Constitution

A crucial step in the decentralisation process in South Africa was the adoption of the new Constitution in 1996. The provisions of the Constitution which are relevant to this study (Mostly contained in Chapter 7 of the Construction) are dealt with in greater detail elsewhere,⁷¹ and it is not intended to discuss them in detail at this point; suffice it to say for present purposes that the Constitution provided for key issues which are relevant to decentralised government, including the distinct nature of local government, the need for intergovernmental cooperation, the right of a municipality to govern the local government affairs of its community, powers and functions of municipalities, and funding of municipalities.

⁶⁹ The World Bank is quite explicit in opining that the goal of decentralisation in South Africa was to “unify the country...decentralization has succeeded in becoming one of South Africa’s main instruments of unification” (2000:108).

⁷⁰ Friedman and Kihato suggest that “fashionable governance ideas were accepted not because gullible locals were talked into adopting the latest snake oil remedy from the disingenuous North, but because the fashion seemed to local elites to offer a way out of real dilemmas and to provide solutions to real problems” (2004:142). See also Koelble and LiPuma (2008).

⁷¹ See Chapters 7 to 12.

4.5 The White Paper on Local Government

4.5.1 General

The next major phase in the process of evolution was the development of the White Paper on Local Government. The White Paper was itself the product of a process which commenced with the production of a discussion document which raised a number of questions on the future structure and nature of local government (Craythorne 2006). This led to the production of a Green Paper on Local Government in October 1997 which set out a potential policy on local government; and this in turn led to the White Paper on Local Government, which was approved by the Cabinet in 1998 and thereby became government policy. It formed a broad statement of policy which was to provide the framework for giving legislative “teeth” to the relevant provisions of the Constitution.

The White Paper is partially the key to understanding the broader framework of modern local government in South Africa and it will therefore be appropriate and useful to dwell on aspects of it which are of particular relevance to this study. These are discussed in subsections 4.5.2 to 4.5.6 below.

4.5.2 Developmental Local Government

The objects of local government had already been spelled out in Section 152 of the Constitution by the time that the White Paper was produced. The White Paper translated these objects into the notion of Developmental Local Government which it defined as “...local government committed to working with citizens and groups within the community to find sustainable ways to meet their social, economic and material needs and improve the quality of their lives.”

The White Paper ascribed various characteristics to the notion of developmental local government, namely, “maximising social development and growth,” “integrating and co-

ordinating,” “democratising development, empowering and redistributing,”⁷² and “leading and learning.”

In the context of developmental actions, the White Paper saw local government as having four key outcomes: the provision of household infrastructure and services; the creation of liveable integrated cities, towns and rural areas; local economic development; and finally, community empowerment and redistribution.

It was seen as necessary for significant changes to be made to the way local government worked in order to achieve these developmental outcomes. Three inter-related tools were proposed in the White Paper to assist municipalities to become more developmental, namely, integrated planning and budgeting; performance management, and working together with local citizens and partners.

The first of these tools, integrated planning, was proposed as a process to enable municipalities to establish development plans for the short, medium and long terms. According to the White Paper, Integrated Development Plans (or IDP’s, as they are commonly known) are in effect planning and strategic frameworks to help municipalities fulfil their developmental mandates. The development of IDP’s was seen as a way of enhancing the strategic planning capacity of municipal administrations, building organisational partnerships between management and labour, and “enhancing synergy between line functions.”⁷³

The second and third tools are of greater interest for purposes of this study. The second tool, performance management, was viewed as being critical to ensure the

⁷² Whilst it was recognised that regulation remains an important government function, it was argued that the regulation function of municipalities should be supplemented with leadership, encouragement, practical support and resources for community action. Developmental Local Government was seen as being uniquely placed to combine empowerment and redistribution.

⁷³ The concept of the IDP has attracted enormous interest from writers as well as having absorbed an astounding proportion of the energies of many municipalities. Given the attention which Integrated Development Planning has already enjoyed, it is not proposed to devote further attention to it in this study. In any event, it is submitted that the concept of the IDP is not an essential element of decentralisation.

implementation of plans, that they resulted in the desired developmental impact, and that resources were utilised efficiently. Performance management is often associated with the concept of New Public Management, but it is also an important element of decentralisation inasmuch as it concerns the dimension of institutional capacity, and it will be examined later in this study.

The third tool was “working together with local citizens and partners.” The White Paper declared that “Building local democracy is a central role of local government, and municipalities should develop strategies and mechanisms...to continuously engage with citizens, business and community groups.” “Working together with local citizens” is an aspect of community participation which, as we have seen, is an important component of decentralisation, and which will also be examined in some detail later.

Municipalities were seen as requiring active participation by citizens at four levels: as voters; as citizens who express their views before, during and after the policy development process, in order to ensure that policies reflect community preferences as far as possible; as consumers and end-users, who expect value-for-money, affordable services and courteous and responsive service; and as organised partners involved in the mobilisation of resources for development via for-profit business, non-governmental organisations and community-based institutions.

4.5.3 Co-operative Government

Co-operative government is an important aspect of the White Paper,⁷⁴ which recognised the need to establish a set of formal and informal processes, structures, channels and institutional arrangements for bilateral and multilateral interaction within and between spheres of government. Both National and Provincial governments were viewed as having a number of roles and responsibilities with respect to local government.

⁷⁴ Co-operative government is, as we have seen, one of the key dimensions of decentralisation, and is also a key feature of the Constitution.

In the context of co-operative government in practice, it was also recognised that national government was “increasingly looking to local government as a logical point of co-ordination and a necessary vehicle for the implementation of policies and programmes” (Ministry for Provincial Affairs and Constitutional Development 1998:52), and that provincial governments were also decentralising certain functions to local government.

National and provincial government were seen as being in a position to build local government capacity through the way they executed their own programmes. One of the ways in which this could be achieved was working with local government directly; another was by integrating programmes into municipal Integrated Development Plans; and a third was by means of co-ordinated decentralisation and the assignment of powers.⁷⁵

4.5.4 *Administrative Systems*

The White Paper declared that “little attention has been paid to rethinking the basic principles on which (municipal) administration is organised. In particular, new administrative capacities have not been built and administrative operations have remained locked in traditional approaches to service delivery. The potential, skills and energies of the majority of the workforce have not been harnessed for transformation;” and further, “transformation for developmental local government requires a further process of administrative reorganisation to gear municipalities to meet the considerable challenges of social, economic and material development in all communities” (Ministry for Provincial Affairs and Constitutional Development 1998:92).

⁷⁵ In this regard, it was noted that national and provincial governments are constitutionally permitted to devolve powers and functions to local government. It was recognised that whilst decentralisation was often desirable to improve the effectiveness of government as a whole, it is not without problems. Of particular concern was the phenomenon of the “unfunded mandate” – that is, the devolution of a function to local government without it being accompanied by the financial and administrative capacity required to sustain it. It was recognised that unfunded mandates strain local government’s limited resources which would ultimately lead to a lack of delivery.

Administrative issues with which the White Paper concerned itself included “new approaches to service delivery” and core administrative capacities to support development. The latter issue is of greater interest for purposes of this study, in the context of the dimension of administrative capacity.

4.5.5 Municipal Finance

The White Paper proposed a new framework for Municipal Finance to support the developmental role of local government. The policy objectives as stated in the White paper were to be revenue adequacy and certainty, sustainability, effective and efficient use of resources, accountability, transparency and good governance, equity and redistribution, development and investment, and macroeconomic management. It was deemed necessary to restructure the financial and fiscal system in four areas in order to achieve these objectives.

Local revenue instruments and policies were the subject of the first such area. Sources of revenue considered were property rates, fuel levies and user charges. Showing a degree of prescience perhaps lacking elsewhere in the White Paper, it was recognised that credit control would be a vital instrument for ensuring the viability of local authorities (Ministry for Provincial Affairs and Constitutional Development 1998:113-119).

The second area related to intergovernmental transfers. Transfers had been provided for in the Constitution⁷⁶ and it was proposed in the White Paper that a new system of transfers would address two key issues, namely, “vertical division,” whereby funds are allocated to the various spheres of government, and “horizontal division, whereby the amount available to local government as a whole is allocated to individual municipalities. Transfers would take the form of either an “equitable share” of national revenue, aimed at supplementing the operating costs of municipalities, or conditional grants for capital

⁷⁶ In Section 214.

projects. It was proposed that a transparent, formula-based system be phased in order to determine the division of revenue.

The third area dealt with the leveraging of additional investment in the municipal sector. There were seen to be three key areas of municipal finance which supported additional investment: borrowing and investment powers of municipalities; credit enhancement (in lieu of national guarantees⁷⁷) and concessional finance. The view was taken that in order to encourage private investment, it would be necessary to achieve greater clarity with respect to the security of loan investments. This was intended to be facilitated by the development of a framework of monitoring the financial position of municipalities. The general approach was to emphasise the importance of achieving financial discipline through decentralised market relationships rather than the direct, centralised control of local government.

The fourth area was concerned with budgeting, accounting, financial reporting and management. Whilst the White Paper emphasised that budgets were “a critical tool for refocusing the resources and capacity of the municipality behind developmental goals,” it recognised that budgeting, accounting, financial reporting and financial practices of municipalities suffered from a number of weaknesses, including unrealistic budgeting, poor credit control, a lack of budgetary and financial discipline, and a lack of user-friendly and accessible information on the budget process. Curiously, the only measure contained in the White Paper aimed at addressing this issue relates to the establishment of a generally accepted accounting practice for municipalities, with recommendations for reserves, provisions and funds, capital accounting, internal reporting and external reporting.

⁷⁷ Section 218 of the Constitution provides that the “national government (and) a provincial government ...may guarantee a loan only if the guarantee complies with any conditions set out in national legislation.”

4.5.6 *The Transformation Process*

The White Paper proposed that the achievement of developmental local government depended, not just on policies and laws, but on municipalities themselves: “as they engage with transformation, they will - step by step – give real content to their developmental role” (Ministry for Provincial Affairs and Constitutional Development 1998:129). The reader might be forgiven for thinking (even if only with the benefit of hindsight) that this was a rather unrealistic expectation; one which is further reflected in the statement that “over the past five years...municipalities and communities have built up capacity. In the process of negotiating changes in their local areas, they acquired skills to engage with different opinions, promote change, negotiate and mediate, innovate, collectively find solutions to challenges” (Ministry for Provincial Affairs and Constitutional Development 1998:129).

National government’s principal role in the transformation process was seen as preparing the way for nation-wide municipal elections and the creation of an enabling framework of laws and policies which would promote the establishment of a new developmental local government. In addition, national government was to facilitate the establishment of mechanisms to support municipal transformation. Means of achieving this last objective were to include the increasing of local government’s voice, the coordinated decentralisation of powers and functions to local government, a coherent planning framework for integrated development planning, support for improved service delivery, developing performance management systems, training and capacity-building, increasing financial certainty, and ongoing institutional development.

4.5.7 *Critiques of the White Paper*

The local government policy framework as captured in the White Paper has been described as ambitious, and as a commanding, complex, forward-looking and optimistic manifesto to systematically realise a participatory local government system that is at the

heart of an effort to achieve democratic citizenship, integrated development and reconciliation between the divided communities in South Africa (Pieterse 2002).

Other commentators offered more incisive opinions. It was pointed out that the White Paper failed to state simply and accurately the core challenges that faced local government in 1998, or to assess the implications of this situation, with no clear statement of how government perceives the crisis in local government (Bernstein 1998).⁷⁸ Specific criticisms levelled at the White Paper included its failure to deal systematically with a range of complex issues, such as the perception that at the time, two-thirds of municipalities were financially distressed and one-third were not financially viable, with no hope of generating income to cover their service commitments. A further criticism was that although a critical component of the crisis in local government was the lack of administrative, managerial and financial capacity in many local authorities to enable them to function as viable entities, this “stark reality” was scarcely alluded to in the White Paper, and certainly did not form the basis upon which any policies or new approaches to local government would be based. Instead, the White Paper simply assumed the capacity in most respects and then enumerated the many and often new functions for local government to perform (Bernstein 1998). Issues relating to the extent and causes of non-payment of rates and service charges were also ignored.

It is interesting to note that as early as 1998, commentators had identified the existence of serious challenges, whilst the White Paper tended to gloss over them, with vague comments such as “some municipalities have inadequate financial management capacity” and “many administrations are still organized in much the same way as before, and most have not made significant progress with respect to transforming delivery systems” (Ministry for Provincial Affairs and Constitutional Development 1998:8). Such statements

⁷⁸“...each challenge is dealt with as a separate element, making a mockery of notions of integration and coordination...unless we fully understand the nature, scope and causes of the current crisis...we will be unable to identify the implications for future policy. Until this is systematically addressed, we might just keep on repeating the same errors and making the same false assumptions.” (Bernstein 1998:298) A prescient observation indeed; and a clear warning about unanticipated consequences.

certainly do not reveal any appreciation for the magnitude of the problems which even then were facing local government, and which persist today.

It is also worth noting that the White Paper was considered by the Constitutional Affairs Portfolio Committee of Parliament in 1998. It had been suggested during the course of proceedings that the White Paper encouraged centralisation rather than decentralisation of powers and functions to the local level of government,⁷⁹ which prompted the then Minister for Constitutional Affairs to counter that the White Paper set out to establish autonomy in the local sphere. Without any apparent sense of irony, the Minister spoke of a “village mentality” which, in his view, “meant that there is a notion of communities wanting to do things their own way irrespective of what has been decided upon by government” (Minutes of the Proceedings, Constitutional Affairs Portfolio Committee, 20 April 1998).

4.6 Legislation

Following the final Constitution and the White Paper, a slew of legislation pertaining to local government was enacted. The Constitution sets out the broad principles and requires subsequent acts of parliament to determine how these principles are to be applied. The supportive legislation enacted in the first years after the 1994 transition does not primarily legislate specifics but puts in place sets of institutional arrangements to facilitate what was no doubt hoped would be the best substantive outcome (Fölscher and Cole 2006). Later legislation showed a tendency to be more detailed and prescriptive.

This section enumerates the various statutes relating to local government and provides a brief description of their respective purposes. What emerges from the legislation is a

⁷⁹ One of the submissions criticised the White Paper for attempting to spell out measures to dictate outcomes in municipalities. It was argued that various local governments should have more of an opportunity to choose their own outcomes, and should be permitted and encouraged rather than mandated in their actions; if this was not to be the approach from national level, then the nature of local democracy was open to question. (Minutes of the Proceedings, Constitutional Affairs Portfolio Committee, 20 April 1998).

comprehensive statutory framework which largely reflects a decentralised model of local governance, covering issues from demarcation of local government areas of jurisdiction, to funding (both from local sources and from central government), to local government structures, to mechanisms and systems for implementation. The relevant statutes are discussed below in chronological order.

(i) Intergovernmental Fiscal Relations Act, no. 97 of 1997: The purpose of this Act is to promote co-operation between the national, provincial and local spheres of government on fiscal, budgetary and financial matters, and to that end, to prescribe a process for the determination of an equitable sharing and allocation of revenue raised nationally. The enactment of a statute dealing the equitable division of revenues was expressly required by section 214 of the Constitution. Section 227 of the Constitution specifically provides that local government is entitled to an equitable share of revenues.

(ii) Financial and Fiscal Commission Act, no. 99 of 1997: Section 220 of the Constitution establishes the Financial and Fiscal Commission. Its function is to make recommendations envisaged in Chapter 13 of the Constitution, which deals with general financial matters, including local financial matters. The Financial and Fiscal Commission Act gives effect to the Constitution and specifically states that the Commission acts as a consultative body for, and makes recommendations and gives advice to, organs of state in the national, provincial and local spheres of government on financial and fiscal matters.

(iii) Local Government: Municipal Demarcation Act, no. 27 of 1998: The purpose of the Municipal Demarcation Act is to establish the Municipal Demarcation Board whose function it is to determine Municipal boundaries and to provide advice on matters relating to the Act. The enactment of the Act was required under section 155 (3) of the Constitution.

(iv) Local Government: Municipal Structures Act, no. 117 of 1998 (“Structures Act”): The Structures Act provides for the establishment of municipalities, establishes criteria for determining the category of municipality to be established in a particular area, defines

the types of municipality that may be established within each category, provides for the division of functions and powers between categories of municipality, regulates the internal systems, structures and office-bearers of municipalities and provides for electoral systems for local authorities.⁸⁰

(v) Local Government: Municipal Electoral Act, no. 27 of 2000: This act regulates the conduct of municipal elections.

(vi) Local Government: Municipal Systems Act, no. 32 of 2000 (“Systems Act”): The purpose of the Systems Act is, amongst many other things, to establish the principles, mechanisms and processes that enable municipalities to function, to define the legal nature of municipalities, to provide for the manner in which municipal powers and functions are exercised and performed, to establish a frameworks for community participation, planning and performance management, to provide a framework for local public administration and human resource development and to provide for service tariffs and credit control and debt policies.

(vii) Local Government: Municipal Finance Management Act, no. 56 of 2003 (“MFMA”): The aim of the MFMA is, according to its long title, to “secure sound and sustainable management of the affairs of municipalities...” Provision is made, amongst other things, for revenue management, budgets, debt, responsibilities of office bearers and officials, supply chain management and financial reporting and auditing.

(viii) Local Government: Municipal Property Rates Act, no. 6 of 2004 (“Rates Act”): This Act provides for municipalities to impose rates on properties, to provide for exemptions and exclusions, to provide for valuations and objections, and the like. According to the preamble to the Act, there is a need to provide local government with “access to a sufficient and buoyant source of revenue”; “income derived from property

⁸⁰ Interestingly, it has been said of the Structures Act that it “clearly marks the national state’s efforts to centralise so as to enforce its redistributive and growth goals” (Oldfield 2002:94). Is this really a case of centralisation or is it rather an attempt to clothe a broad decentralised framework as contained in the Constitution with detailed systems for application in practice?

rates is a critical source of revenue for municipalities to achieve their constitutional objectives”; and “it is essential that municipalities exercise their power to impose rates within a statutory framework that ...enhances certainty, simplicity and uniformity...”

(ix) Intergovernmental Relations Framework Act, no. 13 of 2005: The purpose of this Act is to establish a framework for the national government, provincial governments and local governments to promote and facilitate intergovernmental relations and to provide for mechanisms and procedures to facilitate the settlement of intergovernmental disputes.

(x) Municipal Fiscal Powers and Functions Act, no. 12 of 2007: This Act is intended to give effect to the provisions of section 229 (1) of the Constitution which, amongst other things, permits the imposition by municipalities of surcharges on fees and if authorised by national legislation, taxes, levies and duties in addition to rates and surcharges. It provides that the minister of finance may authorise a municipal tax, and may prescribe compulsory national norms and standards for imposing municipal surcharges. As at the time of writing, no such municipal tax had been authorised.

4.7 Categories of Municipalities

One of the features which emerged from the development of the local government framework was the categorisation of municipalities into three types as provided for in the Constitution. Although the categorisation of municipalities is not especially relevant to the decentralisation *per se*, the different categories are frequently referred to in this study and it is therefore appropriate to discuss them briefly at this point.

The first type of municipality is the metropolitan municipality (referred to in the Constitution as a “Category A” municipality). Metropolitan municipalities have been established for the major urban areas in South Africa. Such a municipality has exclusive municipal executive and legislative authority in its area. Metropolitan municipalities are authorised to perform within their areas all of the powers and functions given to local government by the Constitution. In other words, they are self-standing institutions. The

second type is the “local municipality” (referred to as a “Category B” municipality in the Constitution). The third type is the “district municipality” (referred to as a “Category C” municipality in the Constitution). Typically, several local municipalities are situated within the geographical area of jurisdiction of each district municipality. Local municipalities share municipal executive and legislative authority in their respective areas with the district municipality within whose area they are located. Powers and functions are allocated between the two categories of municipality in accordance with the provisions of the Structures Act,⁸¹ so that a district municipality performs specific functions across the entire district, whilst each local municipality situated in that district performs other specific functions within its own local area of jurisdiction.

As at the time of writing, South Africa has 6 metropolitan municipalities, 46 district municipalities and 231 local municipalities.

4.8 Concluding Remarks

According to the World Bank (2000), decentralisation typically takes place during periods of political and economic upheaval. Such conditions may not always be conducive to the effective application of a process of decentralisation.⁸² South Africa has indeed undergone a radical transformation in its local government system, but although the transformation may in many respects have been dramatic, it was nonetheless carried out pursuant to a process of negotiation which resulted in a general consensus as to the course to be taken, with due provision having been made for the orderly and rational implementation of a system of decentralised governance. In the course of the process, a new system of local government was constitutionally entrenched, and the end product is a battery of legislation which is intended to give effect to the constitutional features relevant to local government. Nonetheless, a critical component of the process - that of

⁸¹ Structures Act, Sections 83 to 88. See Chapter 11 for further detail on this topic.

⁸² “Euphoria at the fall of an authoritarian regime, an economic crisis that precipitates a regime’s collapse, the jockeying for power of new interest groups -all these conditions create an environment in which a careful, rational and orderly process of decentralization is highly unlikely” (World Bank 2000:123).

the development of policy, as reflected in the White Paper on Local Government - is a cause for disquiet. The lack of appreciation in the White Paper for the nature and extent of the problems besetting local government at the time that it was produced, and the lack of a realistic, focussed response to those problems, give cause to question whether the legislative framework which resulted was or is capable of being properly implemented. Succeeding chapters will examine the extent to which such implementation has in fact been achieved.

Chapter 5

Methodology and Related Matters

5.1 Introduction

The object of a systematic study of governance is to determine “how, why, and with what consequences public-sector activity is structured and managed” (Lynn *et al*, 2000:234). Local government in South Africa involves, amongst other things, people, personalities, agendas, external pressures, internal turmoil, various functional disciplines, conflicting goals, and competing demands. These issues are not unique to South African local government – any organisation has and encounters them. One of the features of modern South African local government which distinguishes it as a subject for research, however, is the fact that it is richly endowed with a set of rules which, on the face of it, represents a framework for dealing with those issues, for achieving good governance, and for producing effective, efficient and accountable administration. As has been shown in Chapter 1, however, there is mounting evidence that despite these rules, the presumably hoped-for objectives of local government have in many respects not been attained. This study endeavours to establish how the framework of local government is structured, why it is so structured, and what the consequences of adopting that structure are. The methodology employed in this study as described in the next section therefore aims to achieve the object stated above by Lynn *et al* insofar as it relates to South African Local Government.

5.2 Research Methodology

Numerous studies have been conducted on various aspects of decentralisation in different parts of the world. Different approaches and methodologies have been used in order to achieve the particular objects of these studies. Hiskey and Seligson (2003), for example, examine the role played by decentralised local institutions in Bolivia in shaping citizen attitudes towards their political system, and that end, analyse two large public-opinion

surveys. Bardhan and Mookherjee (2005) examine the consequences of local capture for the impact of decentralisation for potentially observable measures of performance of an anti-poverty programme in India. Falletti (2005) examines the set of preferences of national and sub-national actors in Argentina, Mexico and Colombia with regard to the various types of decentralisation by means of interviews with politicians and officials. Asthana (2003) examines and compares the efficiency of water utilities under the control of state and local governments in India by examining records of state public health engineering departments. O'Dwyer and Ziblatt (2006), by contrast, use a data set which includes 68 countries from Western Europe, North America, Eastern Europe, Asia, Africa and South America to explore the relationship between the degree of decentralisation of a country's political institutions and the quality of its governance. Putnam's (2003) famous study of institutional performance in Italy involved, amongst other things, personal interviews with regional councillors and community leaders, nationwide surveys, and case studies. The examples of the various studies referred to above demonstrate that different objectives call for different approaches and different methods.

It follows that the particular objectives of the present study call for a particular approach, one which nonetheless borrows elements of the methods used in certain of the studies referred to above. Accordingly, the methodology employed in this study for purposes of answering the research questions referred to in section 1.5 of Chapter 1 is intended to achieve the following:

- First, to determine a set of “dimensions of decentralisation” as a basis for evaluation. The term “dimensions” is really one of convenience, and encompasses what may be described as the essential elements of decentralisation. These dimensions are more fully considered and analysed in Chapter 6, but it is appropriate to mention them now for the sake of placing them in context. They are:
 - (i) Constitutional security
 - (ii) Size of decentralised units

- (iii) Democratic process
 - (iv) Intergovernmental relations
 - (v) Local government executive structure
 - (vi) Administrative authority
 - (vii) Institutional capacity
 - (viii) Public participation and information mechanisms
 - (ix) Jurisdictional scope
 - (x) Legislative authority
 - (xi) Revenue raising authority
 - (xii) Revenue sharing.⁸³
- Second, to evaluate the local government framework against the twelve dimensions referred to above; this is intended to provide the answer to the first of the research questions, namely, “To what extent are the principles of decentralisation incorporated and supported in the regulatory framework of Local Government in South Africa?”
 - Third, to evaluate the extent to which certain of those dimensions, having been incorporated in that framework, are actually given effect to in practice in municipalities in South Africa. This is intended to answer the second of the research questions namely, “To what extent are the principles of decentralisation applied in practice within this framework?” It must be emphasised that not all of the dimensions are applicable to actual practice; accordingly, the evaluation of actual practice is limited to dimensions (v), (vii), (viii), (ix), (x), (xi) and (xii).

For purposes of responding to the second research question, 37 municipalities in South Africa were involved in the process. Metropolitan municipalities- which are

⁸³ Putnam’s (2003) study was founded on twelve indicators (cabinet stability, budget promptness, statistical and information services, reform legislation, legislative innovation, day care centres, family clinics, industrial policy instruments, agricultural spending capacity, local health unit expenditures, housing and urban development and bureaucratic responsiveness). Although the present study is concerned with the application of the principles of decentralisation rather than with the success of individual institutions, and although the “dimensions” used in the present study are mostly different from Putnam’s indicators, the approach of the present study to evaluating dimensions takes its direction from the approach used by Putnam.

generally considered to be better resourced - were excluded from the process, the objective of this study being to focus on more “typical” municipalities. The choice of municipalities was determined by accessibility and availability of information pertaining to them. Within those confines, an attempt was made to examine a representative sample of municipalities across various spectrums, which are described below:

- Geographic Spectrum: Municipalities were selected from each of the 9 provinces in South Africa. The 37 municipalities included in this study are distributed amongst the Provinces as follows:
 - Eastern Cape: 3 municipalities;
 - Free State: 4 municipalities;
 - KwaZulu-Natal: 4 municipalities;
 - Gauteng: 1 municipality;
 - Limpopo: 6 Municipalities;
 - Mpumalanga: 4 municipalities;
 - Northern Cape: 4 municipalities;
 - North West Province: 4 municipalities;
 - Western Cape: 7 municipalities.

- District/Local Spectrum: The municipalities in the study were divided amongst the district and local categories as follows (no metropolitan municipalities were included in the study):
 - District: 3 municipalities
 - Local: 34 municipalities

- “Capacity” Spectrum: The National Treasury has categorised every municipality as a High, Medium or Low Capacity municipality.⁸⁴ The 37 municipalities in this study are represented in these categories as follows:
 - High Capacity: 5 municipalities
 - Medium Capacity: 13 municipalities (including all 3 district municipalities in this study)
 - Low Capacity: 19 municipalities.

- “Functionality/socio-economic” spectrum: The Department of Cooperative Governance and Traditional Affairs⁸⁵ (or “CoGTA,” as it is colloquially known), which is the national government department responsible for local government, designed a municipal classification system to develop municipal profiles according to spatial location based on the following indicator sets: functionality, socio-economic profile, and basic service backlog status. It applies only to local municipalities and not to district or metropolitan municipalities. “Its purpose is to inform a differentiated approach to the management and governance of our municipalities across the rural and urban landscape of the country” (Department of Cooperative Governance and Traditional Affairs 2009(a):76). Class 1 includes the most vulnerable municipalities; Class 2 includes the “second most vulnerable”; Class 3 represents the second highest performing; and Class 4 represents the highest performing. The 34 local municipalities⁸⁶ in this study were divided amongst these classes as follows:
 - Class 1: 6 municipalities
 - Class 2: 11 municipalities
 - Class 3: 10 municipalities

⁸⁴ In GN 773 published in Government Gazette 26511 of 1 July 2004. The purpose of the classification was originally to serve as a means for granting various municipalities exemptions to delay implementation of various provisions of the MFMA, depending on their financial management capacity as judged by the National Treasury. This classification is no longer relevant to its original purpose, as all municipalities are now required to implement the MFMA in full, but it remains a useful classification for our purpose

⁸⁵ Formerly known as the Department of Provincial and Local Government.

⁸⁶ The three district municipalities in this study are not subject to classification within this spectrum.

- Class 4: 7 municipalities
- The Municipal Infrastructure Investment Framework is the final spectrum. It uses the legal categorisations contained in the Constitution, i.e. “A” category (metropolitan municipality), “B” category (local municipality) and “C” category (district municipality”), with the latter two categories being further refined as follows:

B1: local municipalities with the largest budgets, also known as “secondary cities”

B2: local municipalities with large towns at their core

B3: local municipalities with small towns and relatively small populations

B4: local municipalities which are mainly rural with communal land tenure

C1: district municipalities which are not water service authorities

C2: district municipalities which are water service authorities.⁸⁷

The 37 municipalities in this study were represented in these categories as follows:

- Category A: 0
- Category B1: 3 municipalities
- Category B2: 3 municipalities
- Category B3: 21 municipalities
- Category B4: 7 municipalities
- Category C1: 3 municipalities
- Category C2: 0.

Appendix A (Table 1) shows the above distribution in tabulated form. Provinces are indicated in this table in abbreviated form, as follows:

- Eastern Cape: EC
- Free State: FS

⁸⁷ Department of Cooperative Governance and Traditional Affairs (2009 b:62)

- Gauteng: Gng
- KwaZulu-Natal: KZN
- Limpopo: Lim
- Mpumalanga: Mpum
- Northern Cape: NC
- North West: NW
- Western Cape: WC

The same abbreviations are used in the other tables presented in this study. It should be noted that for reasons of confidentiality, the individual municipalities are not identified by name, but merely by the relevant provincial abbreviations and serial numbers allocated by the author.

5.3 Archival and Documentary Sources

Limited data on individual municipalities were to be found in public records; such information as was available was obtained for each municipality from public records from three main sources.

First, the Annual Capacity Assessment Reports of the Municipal Demarcation Board for 2008/2009 were examined for information relating to staffing issues and the performance by municipalities of their powers and functions.

Second, each municipality's summarised budget for the 2009/10 financial year (being the current year at the time of writing), as well as the budgetary projections for the following two financial years (these three financial years together constituting the Medium-term Revenue and Expenditure Framework for the period 2009-2013) was also examined, the objective being to determine the extent of reliance on national subsidies. These budgets form part of a compilation of summarised budgets of all South African municipalities

prepared by the National Treasury, which compilation is referred to in this study as “Operating and Capital Budgets for all Municipalities 2009/10 to 2001/12.”

Third, the reports of the Auditor-General for each of the municipalities for the 2007/08 financial year were examined. The purpose of this was to ascertain levels of compliance with certain legislation and also to ascertain certain indicators relating to good management practice.

5.4 Information Obtained Directly from Municipalities

Information was also derived directly from the 37 municipalities in the sample. Given the lack of data available from public records, this proved to be an important source of information.

Information was gathered by means of discussions and interviews with officials of the municipalities, and by examining documentation kept by municipalities. Where necessary and possible, the information which was obtained was supplemented by reference to the archival sources referred to above, such as reports of the Auditor-General and reports of the Municipal Demarcation Board. Responses were, where appropriate and possible, also verified by examination of supporting documents obtained from municipalities.

The process of gathering information directly from municipalities stretched over an extended period of some 14 months. The results of this process therefore do not constitute a single “snapshot” of the entire sample at a particular moment. Rather, they represent a series of snapshots of the respective municipalities taken over the extended period, with each examination of a municipality revealing the state of affairs prevailing at such municipality at the time it was undertaken. Circumstances at any particular municipality may therefore have changed during the course of or after the information-gathering process.

Inasmuch as the objective of the process was to determine the extent to which the dimensions of decentralisation are actually applied in practice, it focussed mainly on those dimensions of decentralisation which are relevant to actual practice in South African municipalities, namely, dimensions (v), (vii), (vii), (ix), (x), (xi) and (xii). The collection of empirical data on municipalities was therefore confined to these dimensions only.

Where it was not possible to obtain information from certain municipalities on specific issues, of necessity the sample of municipalities was reduced in respect of those issues. Thus whilst 37 municipalities in total were examined for purposes of this study, in a number of cases a lesser number was examined in relation to specific issues. In cases where fewer than 37 municipalities were examined in relation to any particular aspect, this is noted in the text of this study.

5.5 Research Challenges

A challenge to any research on local government in South Africa relates to the accessibility of information. Many South African Municipalities are extremely opaque organisations in the sense that information regarding them is not easily obtained, either because it is not recorded or it is not readily accessible. As far as the individual municipalities which are the subject of this research are concerned, there may be several reasons for this.

In the first place, a number of these municipalities had inadequate record-keeping systems, and information on certain topics was often simply not recorded.

A second cause is the fact that in many cases, “institutional memory” had been lost. This was due in large part to the large turnover of staff in many municipalities. In a number of cases, key staff members from whom information was sought had been in office for only a few weeks, with little continuity between themselves and their predecessors. In other cases, key positions had been vacant for many months, with the result that no-one in the

municipality concerned had any particular interest in or knowledge of the subject matter on which information was sought.

A third cause is the lack of skills and knowledge. It became apparent during the course of this research that many municipal officials simply did not know their subjects well enough to provide the required information. This was sometimes true even in cases where the officials in question had been in office for extended periods.

A fourth cause is the lack of compliance with statutory requirements relating to access to information. For example, municipalities are required by legislation to maintain websites on which a wealth of information is supposed to be available. Theoretically, therefore, much of the information which was required for this research should have been easy to pluck from those websites. The reality is far different. Most of the municipalities which are the subject of this research either did not have websites at all, or had websites which were so outdated or dysfunctional as to be of little use.⁸⁸

These difficulties to a large extent determined the methodology employed in this research, as described in this chapter. As Lynn *et al* (2000) point out, decisions about appropriate models are inexorably intertwined with the limitations of available data.

⁸⁸ See Chapter 10.

Chapter 6

Dimensions of Decentralisation: A Basis for Evaluation

6.1 Purpose of Chapter

An evaluation of the extent to which the principles of decentralisation have been incorporated and are applied in local government in South Africa is undertaken in Chapters 7 to 12. First, however, it will be necessary to determine the dimensions which make up the essence of decentralisation. It is against these dimensions that such an evaluation will be made. The purpose of this chapter is to enumerate and discuss those dimensions.

6.2 Twelve Dimensions of Decentralisation

At the outset, it would be useful to settle on terminology. “Dimensions” is a convenient term which encompasses the various elements which constitute decentralisation, and against which an assessment may be made of the extent to which decentralisation is applied in a particular system. There is no particular magic in the word “dimensions;” “components” or “elements” would have served equally well, but the term “dimensions” is used in this study as it is commonly used for this purpose in the literature.

It has been said that traditionally, the most-often used measure for assessing decentralisation is to examine sub-national shares of revenues and expenditures and local government elections (Work 2002); it is submitted, however, that the assessment of decentralisation involves a far wider range of issues than merely these two indicators. Various writers have developed their own concepts of what constitutes the dimensions of decentralisation, including Kearney (1999),⁸⁹ Bardhan and Mookherjee (2006),⁹⁰ Falleti

⁸⁹ Kearney proposes 9 dimensions “designed to capture decentralization’s functional complexity.” (Kearney 1999:1) The dimensions identified by Kearney are (i) Government Structure, (ii) Selection of the Regional Executive, (iii) Selection of Local Executive, (iv) Override Authority, (v) Revenue Raising Authority, (vi)

(2005)⁹¹ and Shah and Thompson (2004).⁹² This chapter aims to develop a set of dimensions (based to some extent on the contributions of these writers) which reflect the essence of decentralisation and which are of general applicability. Guiding this process is the assumption that local governments must meet certain requirements if they are to function effectively. In the first place, local governments must have a solid constitutional basis for existing and functioning, accompanied by popular legitimacy. They must have defined functions, and have the executive and legislative authority to perform those functions and to govern. It follows that they must have rules, mechanisms and systems to govern their processes. Given that local governments are supposed to be responsive to local needs, they must be able to identify the demands of their populations. As is the case with any government, they must have defined areas of territorial jurisdiction containing meaningful populations. They must have access to resources, derived either from their own areas of jurisdiction or from other sources; and they must be accessible, accountable and responsive to their populations.⁹³

Revenue Sharing, (vii) Authority for Education, (viii) Infrastructure and (ix) Policing. Kearney uses these dimensions as a basis for an index for measuring decentralisation.

⁹⁰ The list of what Bardhan and Mookherjee refer to as “dimensions of design”, which does not purport to be exhaustive, categorises the dimensions somewhat differently. They are concerned with (i) constitutional authority (ii) the electoral process, (iii) the range of expenditure and management responsibilities, (iv) financial devolution, (v) authority and competence of local officials and (vi) information and oversight systems.

⁹¹ Falleti, in categorising the “operationalisation” of the intergovernmental balance of power, refers to five dimensions: (i) the sub-national share of revenues, (ii) the sub-national share of expenditures, (iii) the policymaking authority, (iv) the type of appointment of sub-national officials (are mayors, for example, elected or appointed?) and (v) the territorial representation of interests in the national legislatures.

⁹² Shah and Thompson, without specifically using the term “dimension,” categorise those elements which in their analysis constitute the components of political and administrative decentralisation. In the case of political decentralisation, these elements are (i) the existence of constitutional safeguard against arbitrary dismissal of local government; (ii) popular elections of local council members; (iii) popular election of heads of local councils; (iv) degree of popular participation in local elections; (v) provisions for popular recall of local officials; (vi) contestability in local elections; (vii) security of existence for local government; and (viii) overall political decentralisation. In the case of administrative decentralisation, these are (i) freedom to hire/fire/set terms of employment of local government employees; (ii) freedom to contract out own responsibilities; (iii) administrative regulatory authority; (iv) overall administrative decentralisation.

⁹³ These requirements are similar in several respects to those suggested by Olowu and Wunsch (2004) as being essential if local governance is to be considered operational, namely, that institutions must be able to identify problems, set priorities, mobilise resources, implement programmes, evaluate results, learn from those results, maintain popular legitimacy, have a defined area and population, be of reasonable size, have

It is submitted that the twelve dimensions discussed below, although they are not exhaustive, when taken together reflect those requirements and incorporate the essence of decentralisation, and should be provided for in any decentralised system. They are as follows:

Dimension (i) - Constitutional Security: The first dimension describes the formal political structure of a country and the extent to which it is secured. Of primary concern here is whether the country has a constitution which recognises decentralised government; and whether local governments have an independent authority enshrined in the constitution and are protected against arbitrary dismissal by central government, or whether they exist at the mercy of upper-level governments.⁹⁴ Also of relevance here is the number of levels of sub-national government. Devas and Delay (2006) maintain that except in the smallest countries, there is a need for a level between central and local government to provide co-ordination between local governments and to ensure that services with scale economies are properly provided. What needs to be decided is whether such an intermediate or regional tier of government should be part of the central government apparatus (that is, a deconcentrated tier) or a democratically elected tier of devolved government.

Dimension (ii) - Size: The second dimension relates to the size – both in relation to population and geographical extent – of the decentralised units. The issue here is whether a country which pursues a purportedly decentralised path provides a means for determining the size of such units. The choice of size is of importance for a number of reasons, including the impact on democratic participation and political accountability,⁹⁵

authority and resources proportionate to the problems they face, and be working institutions that make decisions and enforce accountability. In addition, the political process must provide accountability and be open to widespread political participation. Finally, they must have a stable set of rules to organise local affairs (see Olowu and Wunsch 2004:7).

⁹⁴ See Bardhan and Mookherjee (2006); Shah and Thompson (2004); Kearney (1999).

⁹⁵ See also van Assche and Dierickx: “If small scale politics are likely to generate more trust and legitimacy for the local authorities, it is also likely to entail less effectiveness for the political authorities, local and

service provision, policy co-ordination, and, critically, overall viability.⁹⁶ The empirical evidence about the impact of size on citizen participation is, however, not especially clear. Beneficial effects of smaller units often seem at to be mixed (Devas and Delay 2006). In certain parts of the world, on the other hand, decentralisation has often been to relatively large units,⁹⁷ and “it is questionable how far such decentralisation can deliver the benefits of increased democratic control and accountability when decision-making remains almost as remote from ordinary citizens as that of the central government” (Devas and Delay 2006:680). The issue of economies of scale is also frequently raised as an important element for determining size; it has been argued, however, that there is little conclusive evidence relating to the supposed benefits of economies of scale (Dollery and Crase 2006).

Dimension (iii) - Democratic Process: A functional local democracy is frequently identified as a prerequisite for effective decentralisation. Key questions here are whether elections to executive or legislative bodies occur at all, or whether appointments are made by central government (Kearney 1999; Bardhan and Mookherjee 2006; Shah and Thompson 2004); whether if elections occur, they are mandated by law to occur periodically (Bardhan and Mookherjee 2006); whether there are any constraints on electoral contestants or on electoral mobilisation efforts (Bardhan and Mookherjee 2006); and whether political parties are allowed freely to participate (Bardhan and Mookherjee 2006; Shah and Thompson 2004). A further key issue is whether there are adequate

central alike...A choice has to be made between a reform of the local administration, emphasising the output of the local authorities (or effectiveness), and a reform of local politics, emphasizing their input (or legitimacy). In order to avoid this dilemma the normative question is how to determine the optimal size for ‘local politics’, a size that would increase legitimacy without surrendering too much effectiveness” (2007:27).

⁹⁶ Writing on the tendency in Australia to amalgamate local authorities into large units, Dollery and Crase (2006) state that numerous problems arise from amalgamation, especially in rural and regional areas. Amongst these are a reduction in the vibrancy of local democracy, less political representation and lower public participation, and retardation of local economic development, including decreased economic activity, rising unemployment and the formation of ‘ghost’ towns.

⁹⁷ For example, in South Africa, the process of demarcation conducted in 1999 and 2000 reduced the number of municipalities from 843 to 284 (and since further reduced to 283- of which 46 are district municipalities, which have concurrent geographical jurisdiction with local municipalities), thereby making “South Africa the country with some of the largest municipalities in the world” (de Visser 2005:75).

safeguards to ensure the conduct of free and fair elections (World Bank 2000; Bardhan and Mookherjee 2006); also of concern here is the question of ward-based or proportional representation (Devas and Delay 2006).⁹⁸

Dimension (iv) - Intergovernmental Relations: The fourth dimension relates to the mechanisms which exist to promote intergovernmental relations. The term “intergovernmental relations” refers to the interdependent relationship amongst the various levels of government in a notionally decentralised system as well as the coordination of public policies between those levels. The concept incorporates various components of the governance, administrative and fiscal arrangements established between these various levels, including legislation and regulations, instruments (such as guidelines and mechanisms for monitoring and communication), structures (such as forums), processes (such as budgeting) and dispute resolution procedures.

The World Bank (1997) warns that government actions at the centre can be undermined at local level if there are no enforceable rules governing intergovernmental relations. Most countries adopt models which provide for a sharing of powers and functions over the various levels, and whilst such arrangements can be complex, they can work well when they are clear, and when each level of government’s roles are clearly defined.

An important aspect of intergovernmental relations is that of the provision of oversight and support by central government to sub-national governments. Devas and Delay (2006) note that given the weaknesses of local democratic practices in many developing (and transitional) countries, and the fact that much of the resources for local services comes from the central budget, central governments have a continuing role in ensuring that services are delivered effectively and resources are properly used at the local level. Central governments can use any of a wide range of instruments to oversee the activities of local government. These instruments do, however, raise serious questions about the

⁹⁸ Ward-based elections provide a direct link between citizens and their councillors, and are said to contribute to accountability. Proportional representation systems, on the other hand, are said to produce a more representative elected chamber, but reinforce the position of political parties.

nature of decentralisation and about the balance between central objectives and local choice. After all, it makes little sense to devolve responsibilities to elected local governments if the centre then seeks to control in detail the activities of these local governments.

Dimension (v) - The Local Government Executive Structure: The fifth dimension concerns the choice of executive structure at local level. Democratisation at this level raises questions about which models of local executive structure have the greatest chances of achieving democratic accountability and responsiveness while also delivering essential local public services effectively and efficiently. The appropriate choice depends largely on the particular economic, social and political context, and on the details of the system adopted. There are two main models of executive structure in local government: the single executive, which provides for a directly elected executive mayor, and the plural executive, which provides for a mayor plus executive committee (or functional committees) elected indirectly from the council. The ostensible advantages of the single executive model are that it provides effective decision-making and clear lines of accountability. The plural executive model, on the other hand, offers greater opportunities for council members to have a voice on behalf of their constituents in the council's decisions. The issue is, however, somewhat wider than the mere choice of system by which the mayor is elected; also of concern are the roles of other political office bearers, political structures and the administration, and the relationship between them.

Dimension (vi) - Administrative Authority: The concern here is whether the local government has the right to manage its own affairs, and whether the decentralisation process is both *de iure* and *de facto*, or whether decisions continue to be taken by upper levels of government. In other words, at issue is the manner in and extent to which the balance of actual control rights has shifted from central bureaucrats to elected government officials (Bardhan and Mookherjee 2006). The World Bank (2000) points out that central governments in decentralising countries tend to compensate for their loss of control by stepping up their regulation of sub-national governments, a tendency which can be

counterproductive if central governments with only a limited knowledge of local conditions begin micromanaging local functions.

Particular issues include the autonomy the local government has over the hiring, firing and paying of personnel;⁹⁹ over contracting out its own responsibilities; and over the administration of its procurement processes (Shah and Thompson 2004; Bardhan and Mookherjee 2006).

Dimension (vii) - Institutional Capacity: This dimension relates to the administrative capacity of local governments, the competence of local officials, and whether their administrative and technical skills are adequate for the task at hand. Capacity building, both in terms of human resources and financial support, has often been cited as the principle obstacle in furthering decentralisation processes, and several writers emphasise the need for the existence of administrative and technical expertise, not only at local government level, but also at national level (Manor 1999, 2006; Work 2002; Bardhan and Mookherjee 2006; United Nations Development Programme 2003).

The World Bank insists that improving local services requires an effective administration, and even a well-meaning political team cannot overcome incompetent administration. “In fact, lack of capacity at local level and the need for a massive increase in skilled staff are the arguments most frequently invoked against decentralization” (World Bank 2000:122). Appropriate measures to counter this as suggested by the World Bank are the devolving of appropriate staff during the decentralisation process, permitting local government to hire and fire and offer attractive packages, and the implementation of privatisation measures, whereby local authorities would contract out privatised functions and not actually manage them.

⁹⁹ Wunsch (2001) notes, in the context of African decentralisation, that several issues relating to personnel in decentralised systems are crucial. For example, do administrative personnel retain a civil service status? Are they members of a national civil service, a special unified local government civil service or employees of the local authorities? What are their conditions of service? To whom are they responsible? Who evaluates and promotes them?

Dimension (viii) - Public Participation and Information Mechanisms: With the eighth dimension, we are concerned with whether local citizens have mechanisms for communicating their needs and preferences to the local authority; and whether there are means to keep them informed, including in regard to services, local government budgets, plans and the actions of government officials (Kearney 1999; Bardhan and Mookherjee 2006). The traditional model of representative local government provides for periodic elections, which are often seen as the sole means of achieving citizen participation and accountability. This model is regarded in some quarters as inadequate, as elections are a crude mechanism for achieving local accountability and for ascertaining citizens' views about specific local policy choices (Devas and Delay 2006). It is therefore widely recognised that widespread popular participation is vital to successful decentralisation, and that local elections need to be supplemented by mechanisms which provide for more direct citizen participation in decision-making, and by greater information about the availability and use of resources (World Bank 2001; World Bank 2003(a); Sullivan *et al* 2004). A further benefit of such mechanisms is that they can also help to build accountability, since those who have participated in discussions about the local issues are more likely to demand accountability.¹⁰⁰ It does, however, require the emergence of a civil society that is capable of engaging effectively with local government on behalf of all sectors of the public, including, especially, the poor.¹⁰¹ As Sullivan *et al* point out, there remain important tensions between the practice of representative and participatory democracy.¹⁰²

¹⁰⁰ At least one study suggests that public participation improves performance. See Isham *et al* (1995).

¹⁰¹ Sullivan *et al* refer to a number of factors that are key to securing public engagement: an expectation that participation will impact on outcomes; ownership of the process and a hand in developing the rules of engagement; and a focus on issues likely to be perceived by the public as both accessible and important. (Sullivan *et al* 2006).

¹⁰² "These include issues of scale and scope; representative democracy operates at a macro level but within relatively narrowly defined channels of 'the political', while participative democracy favours smaller scale action but offers wider scope for what might be included. Representative democracy is associated with the practice of advocacy and representation on behalf of 'the public', while participative approaches emphasise 'the public's' involvement in and deliberation of core concerns, acknowledging lived experience as a legitimate basis for contributions alongside technical expertise. Finally, there are tensions about how decisions should be made, for example whether it is possible to reconcile the recommendations emerging from participative processes with the formal decision-making mechanisms of representative democracy" (Sullivan *et al* 2004:248).

Dimension (ix) - Jurisdictional Scope: The ninth dimension examines the jurisdictional scope of responsibilities devolved to local governments. “Jurisdictional scope” refers to the range of services, powers and functions which a particular level of government performs. Many writers tend to consider this subject in the context of fiscal decentralisation, or more specifically, in the context of decentralised expenditure; there is, however, more to it than just a fiscal dimension. We should, it is submitted, be concerned here also with questions of administrative capacity, logistical issues and local needs for the services in question. There are also wider strategic and policy considerations to be taken into account.

Here the issues include the precise functions and decisions to be devolved to local government; whether the local government can decide on the allocation of fiscal resources across those areas and across citizens or localities within the community; whether other spending responsibilities are devolved; whether there is significant ambiguity in allocation of responsibility across different tiers of government; whether there are likely to be significant community spill-overs¹⁰³ (Bardhan and Mookherjee 2006).

Given the wide range of motives and objectives which are said to apply to decentralisation, it is only to be expected that the jurisdictional scope of local governments will vary from country to country. Some services are certainly more susceptible to decentralisation than others. Several criteria can be utilised to determine which services are suitable for decentralisation. The first such criterion is that their benefits should be local, and this would exclude, for example, higher education or defence. Second, their production should be relatively simple, and not lend itself to economies of scale. Third, the number of services decentralised should be sufficiently

¹⁰³ Spill-overs occur when residents from outside the area of a local authority make use of or benefit from the services provided by that authority.

large to help create strong and effective local government – in other words, institutions of significance and import (Prud'Homme 1990).¹⁰⁴

Why is the issue of jurisdictional scope so important? First, and most obviously, it defines what a local government is supposed to do. Second, as was alluded to earlier, there is a fiscal dimension to jurisdictional scope: it determines the demands for funding, and how that funding is applied. Third, it has to do with prestige and credibility – not only in relation to individual local authorities, but also in relation to local government in general. It is therefore essential that local governments be endowed with sufficient powers and functions in order for them to exercise substantial influence within the political system (Manor 1999; De Visser 2005; Goldfrank 2007). Fourth, the extent of jurisdictional scope determines the level of capacity required of a local authority, which must match its jurisdictional scope. Finally, jurisdictional scope is relevant in the context of intergovernmental relations – it determines which level of government performs particular functions, and it is therefore vital that the jurisdictional scope be clearly defined.

Dimension(x) - Legislative Authority: This dimension is concerned with the authority of the decentralised government to make and enforce its own by-laws within its geographical area of jurisdiction and its sphere of competence. This is a critical inquiry, yet it is an issue which is often overlooked by writers who seem to ignore the importance

¹⁰⁴ The World Bank suggests a division of powers and functions amongst various levels of government as follows:

Central Government: Tertiary health care; Control of infectious diseases; Research; University education; Roads and highways (intercity); Public transportation (intercity); Natural resource management; Defence.

State Government: Secondary health care; Curative care; Roads and highways (intercity); Public transportation (intercity); Air and water pollution; Natural resource management; Police protection.

Local Government: Primary health care; Primary and secondary education; Roads and highways (intracity); Public transportation (intracity); Air and water pollution; Solid waste disposal; Water; Sewerage; Fire protection; Land use regulation and zoning; Housing; Cultural policy; Promotion of tourism; Police protection.

of the power of sub-national governments to legislate as an element of decentralisation.¹⁰⁵ That this should be so is somewhat surprising, as it submitted that the authority to enact legislation and determine policy is absolutely fundamental to the issue of political decentralisation. Of particular importance here are the constitutional protection offered to a sub-national government's capacity to legislate; whether or not approval is required from a higher level of government to initiate local legislation; whether the coming into effect of such legislation is subject to approval by a higher level of government; the range of issues on which a sub-national government may legislate; and the standing of local legislation in relation to legislation enacted by other spheres of government.

Dimension (xi) - Revenue Raising Authority: The eleventh dimension is concerned with whether and to what extent sub-national governments have formal authority to raise their own revenue. The issue of which level of government controls which resources has been described as perhaps the thorniest issue of decentralisation. This is so because the ability of sub-national governments to act independently of the central government depends to a considerable extent on whether they have access to independent tax bases and sources of credit (World Bank 2000). Revenues derived from local sources are often seriously inadequate to finance the responsibilities assigned, and as a result, attempts at decentralisation often founder on issues of capacity and resources, and of financial resources in particular (Devas and Delay 2006).

Key questions concern the extent to which the local government has the authority to raise resources, whether through local taxes, user fees or borrowing; and the extent of the autonomy accorded to them over such decisions - for example, what proportion of local government budgets are self-financed, and who sets local tax rates or user-fee tariffs (Bardhan and Mookherjee 2006)?

¹⁰⁵ Shah and Thompson (2004) are amongst the few authors who expressly recognise that "local governments should have the authority to pass by-laws in their spheres of responsibility without having to obtain prior clearance from higher level government" (Shah and Thompson 2004:7).

Sub-national borrowing is another thorny issue for decentralisation. Whilst the borrowing transaction is between the local government as borrower and the lender, the central government is often drawn in because it is ultimately responsible for the stability of the financial system. In consequence, sub-national borrowing is usually subject to the assumption that the central government will fund a bailout if necessary, an assumption that leads banks to lend to uncreditworthy local governments (World Bank 2000).¹⁰⁶ The World Bank warns, however, that central governments must demonstrate early on that they are committed to imposing a hard budget constraint on sub-national governments, as the “mere possibility of a central government bailout can prompt excess spending and deficit financing at the subnational level” (World Bank 2000:124). Fiscal indiscipline, according to the World Bank, is one of the greatest challenges facing multi-tiered systems of government.¹⁰⁷ Central governments therefore need to develop means to protect themselves from excessive exposure to sub-national debt. Worldwide, several approaches are used to control sub-national borrowing. The first relies on market discipline; the second on cooperation between central and local governments; the third involves administrative control; and the fourth, rule-based control.¹⁰⁸ In practice, many countries rely on a combination of all four methods. Other countries prohibit borrowing by local governments outright (World Bank:2000).

Dimension (xii) - Revenue Sharing: The twelfth dimension is concerned with whether a country’s central government regularly and unconditionally transfers a portion of national

¹⁰⁶ According to Rodden, “In fact, credit rating agencies are very explicit in assuming that in countries with high levels of ‘vertical fiscal imbalance’...the central government implicitly backs the debt of the subnational governments. In such systems the central government’s own creditworthiness might be called into question if it fails to enforce a loan contract against a defaulting subnational government. Approached by creditors and facing the prospect of failing in its obligation to enforce property rights, the central government might see a bailout as the simplest solution” (Rodden 2002:672). See also Treisman (2007:108 *et seq*) on the issue of “soft budget” constraints.

¹⁰⁷ A similar pattern has emerged in both developed and developing countries with free-spending sub-national governments building up unsustainable deficits and calling upon central governments to provide special bailout transfers or otherwise assume their liabilities. Several case studies have demonstrated that decentralisation may be dangerous if it allows sub-national governments to expand their expenditures while “externalizing” the costs to central government (Rodden 2002).

¹⁰⁸ Interestingly, the World Bank (2000) states that South Africa practices a combination of market discipline and cooperative control; more recent developments suggest that rule-based control now plays a more important role in South Africa - see Chapter 12.

taxes to lower levels of government. Given that sources of local revenue are not adequate to meet fully the demands for expenditure, the ability of a sub-national government to function is dependent on the extent to which sub-national governments receive regular, predictable and unconditional funds from the central government (Kearney 1999). It is also concerned with the manner in which fiscal transfers from national or regional governments are determined, and how much scope is given to local governments to effect these transfers via processes of decentralised budgeting or planning and whether the transfers are formula-bound or subject to political discretion of upper-level government officials or negotiation between upper and lower levels (Bardhan and Mookherjee 2006). As Devas and Delay (2006) point out, just as local revenue sources are often inadequate, intergovernmental transfers are also problematic, being vulnerable to political manipulation, poorly designed allocation formulae and inappropriate conditions. According to Shah and Thompson (2004), intergovernmental transfers are the dominant source of revenues for sub-national governments in most developing and transitional economies. Given the reliance placed on them as a source of income for sub-national governments, their design is a critical factor in the success of decentralisation.

The World Bank (2000) distinguishes three variables pertaining to transfers. The first variable is the amount to be distributed, which can be fixed as a percentage of national taxes or it can be an *ad hoc* decision. The second variable is the basis for distributing transfers among jurisdictions. This may, for example, take the form of a predetermined formula or it may be decided on the basis of need from time to time; the decision might also be based on purely political considerations. The third variable concerns the conditionalities which are attached to the transfers. They can be earmarked for a specific purpose, such as a capital project (and may be repayable if not used for that purpose), or may be used for unspecified purposes, such as general operating expenditure. The World Bank (2000) maintains that certain basic principles should apply to all countries and to all types of transfers. They should be determined as openly, transparently and objectively as possible; they should be kept stable from year to year, to enable local governments to plan their budgets; and they should be distributed according to simple, predetermined rules. In other words, simplicity, transparency and predictability should be the order of the day.

6.3 Excursus: Fiscal Imbalance

At this point, it will be useful to embark on a brief excursus in order to examine an issue which is inextricably bound up with dimensions (xi) and (xii), those of revenue raising authority and revenue sharing; this is the issue of “fiscal imbalance.” Fiscal imbalance arises when the sources of locally raised revenue are exceeded by the expenditure of local governments. It has been argued (for example, by Prud’homme 1989) that a desirable system is one in which a large share of expenditures is decentralised together with a small share of taxes; others (for example, Watt 2004) suggest local governments should be responsible for a greater share of revenues.

But even the supporters of a system which provides for a small share of local taxes acknowledge that such a system is not without difficulties. It gives rise to grant-dependency, which undermines a responsibility mechanism: in an unbalanced system,¹⁰⁹ in which local governments can spend more than they tax, why should they refrain from spending? (Prud’homme: 1989). A second problem is that of accountability. It is far less likely that an administration will be accountable to an electorate which does not fund that administration’s activities. After all, in such circumstances, why should the electorate care?¹¹⁰ The inconsistency between centralised taxing authority and decentralised spending authority is a serious obstacle to sub-national autonomy and accountability (Putnam 1993). A third problem connected with grant-dependency is that it persuades local politicians, together with their voters and creditors, to believe that central

¹⁰⁹ “With any *given* set of expenditure responsibilities local government will either have adequate powers of taxation to finance these responsibilities, or will need to receive grants from the central government. When powers of taxation match expenditure responsibilities there is said to be vertical fiscal balance. However, much more common worldwide is vertical fiscal imbalance where taxation powers are inadequate to finance expenditure responsibilities” (Watt 2004:613).

¹¹⁰ Watt states that “When there is a high level of vertical fiscal imbalance... the imbalance seriously impairs accountability... The local residents’ right to control their local government stems from their supplying its resources... If, within this framework, central government pays a grant to the local authority, accountability becomes confused. Based on their respective contributions, local residents now share the right to control the local authority with those contributing to funding via central government taxes. Hence, central funding brings with it a requirement for central mechanisms of accountability and control” (2004: 614).

governments will in the long run be unable to ignore their fiscal troubles. When a highly transfer-dependent local government experiences a fiscal shock, it may not have the flexibility to raise additional revenue, which forces it to cut services, run deficits, or rely on arrears to employees and contractors. In that event, the sub-national government might well claim that it is not responsible for the situation, and pressure from voters and creditors is likely to be directed at the central government. With this knowledge, local governments which are transfer-dependent face weak incentives to be fiscally responsible. Even if they could take steps to avoid fiscal crises, it may make more sense for them to press for bailouts as this course of action might prove to be politically less costly (Rodden 2002).

Nonetheless, unbalanced systems, in which local authorities raise relatively little of their own revenue with the central government making up the rest, are widespread, and prevail almost everywhere, both in developing and developed countries (Prud'homme: 1989).¹¹¹ It seems, therefore, that subsidisation of local government by national government is an inevitable concomitant of decentralisation. The choice, perhaps, is a stark one: Local governments have the option either to be responsible for wide-ranging functions and be heavily dependent on central government for finance, or be satisfied with a narrow range of municipal duties, but have a high degree of self-sufficiency (Alam 2006).

6.4 Evaluation

The next six chapters aim to provide an evaluation of decentralisation in South African local government against the 12 dimensions discussed in this chapter. For the sake of convenience, the dimensions (following the order in which they are discussed above) are divided amongst those six chapters as follows:

- Chapter 7 deals with dimensions (i) to (iv) - respectively, constitutional security, size, democratic process, and intergovernmental relations.

¹¹¹ Writing in 2004, Watt found that at the time, on average, central funding supported 75 percent of local government spending in the United Kingdom (2004: 611-612).

- Chapter 8 deals with dimensions (v) and (vi), namely, the executive structure and administrative authority;
- Chapter 9 deals with dimension (vii) - institutional capacity;
- Chapter 10 deals with dimension (viii) - public participation and information mechanisms;
- Chapter 11 deals with dimensions (ix) and (x) - jurisdictional scope and legislative authority; and
- Chapter 12 deals with the “fiscal” dimensions, (xi) and (xii) - revenue raising authority and revenue sharing - which are concerned with the fiscal or funding aspects of local government, and hence referred to as “fiscal” dimensions.

The approach adopted in the next six chapters is to examine the extent to which each of the dimensions is reflected in the constitutional and statutory framework which regulates local government in South Africa. In addition, in the cases of dimensions (v), (vii), (viii), (ix), (x), (xi) and (xii), the extent to which those dimensions are actually applied in practice in municipalities will also be examined. As has been indicated previously, it is only the cases of these dimensions that the actual practice in municipalities is relevant and in which empirical observations are made.

Chapter 7

Evaluation: Constitutional Security, Size, Democratic Process and Intergovernmental Relations

7.1 Purpose of Chapter

The purpose of this chapter is to evaluate the extent to which dimensions (i) to (iv), namely, constitutional security, size, democratic process, and intergovernmental relations are reflected in the South African local government framework. These dimensions are not reflected in the actual operational practice of municipalities. For that reason, this chapter is concerned only with the constitutional and statutory aspects of these dimensions and does not seek to examine municipal practice.

The four dimensions are considered in sections 7.2 to 7.5 below.

7.2 Constitutional Security

The primary concerns around dimension (i) relate to, first, whether South Africa has a constitution which recognises decentralised government; second, whether local governments have an independent authority enshrined in the constitution, and third, whether they are protected against arbitrary dismissal by central government, or they exist at the mercy of upper-level governments. Finally, the issue of the number of levels of sub-national government is of importance.

By the time that South Africa's final Constitution was adopted in 1996, most of the participants in the negotiating process were agreed on the need for establishing local government as an independent sphere of government; this notion is clearly reflected in Section 40 (1) of the Constitution, which provides that "government is constituted as national, provincial and local spheres of government which are distinctive, inter-

dependent and interrelated.”¹¹² Local government is therefore one of the three levels or spheres of government in South Africa, reflecting an arrangement which is typical of a decentralised system.

Section 41 of the Constitution provides that all spheres of government must, amongst other things, respect the constitutional status, institutions, powers and functions of government in the other spheres; not assume any power or function except those conferred on them in terms of the Constitution; and exercise their powers and perform their functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere; and co-operate with one another in mutual trust and good faith.

Section 154 prescribes the role that national and provincial governments are required to play in relation to municipalities, and provides that they must support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and perform their functions.

Section 151 of the Constitution is a key provision as far as this dimension is concerned. It deals with the status of municipalities, and provides that the executive and legislative authority of a municipality is vested in its Municipal Council; it also provides that a municipality “has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation...” It provides further that the national or provincial government may not compromise or impede a municipality’s ability or right to exercise its powers or perform its functions.” The particular importance of these provisions is that local government is by virtue thereof “a level of government in its own right” (de Visser 2005:65).

¹¹² De Visser describes the three spheres in the relationship which is thus created as “three partners in government” (de Visser 2005:54), with each enjoying autonomy, subject, (in the cases of sub-national spheres) to supervision, and each being required to exercise its autonomy to the common good of the country by cooperating with other spheres (de Visser 2005:214). Note that the key phrases are “distinctive,” “inter-dependent” and “interrelated,” *not* “independent.”

It should be noted, however, that the right of a municipality to govern is, according to Section 151(3), “subject to national and provincial legislation;” it may therefore be concluded that the autonomy of local government as a sphere of government is somewhat restricted in relation to that of the other spheres. Furthermore, and notwithstanding the ostensible autonomy conferred on a municipality under the constitution, it remains subject to monitoring by provincial government.¹¹³

It should be noted that Section 139 of the Constitution provides a radical mechanism for intervention in local government by provincial government in the event that a municipality cannot or does not fulfil an executive obligation¹¹⁴ (that concept not being defined, although the power to intervene almost certainly does not extend to the failure of a municipality to perform any legislative function, such as the passing of by-laws) in terms of the Constitution or legislation.¹¹⁵ In such circumstances, the provincial executive may intervene by taking any appropriate steps to ensure fulfilment of that function, including issuing a directive stating steps required to meet its obligations, assuming responsibility for the relevant obligation in that municipality, and dissolving the council and appointing an administrator. Such an intervention is subject to the monitoring and concurrence of the national cabinet minister responsible for local government and of the provincial legislature, as well as of the National Council of Provinces. Provision is also made for intervention in the event of the failure of a municipality to approve a budget or certain revenue raising measures, or in the event of being in serious or persistent breach of its obligations to provide basic services as a result of a crisis in its financial affairs.¹¹⁶

¹¹³ By virtue of Section 155(6) of the constitution, which provides that each provincial government must by legislative or other measures provide for the monitoring and support of local government.

¹¹⁴ Examples of failure to fulfil an executive obligation probably include the failure to provide access to water (if the municipality is a water authority); failure to supply electricity; failure to collect refuse; failure to collect outstanding debts; and failure to apply obligatory supply chain management procedures.

¹¹⁵ Similarly, Section 100 of the Constitution provides that National Government may intervene in Provincial Government if the latter does not fulfil an executive function. In addition, sections 136, 137, 138 and 139 of the Local Government: Municipal Finance Management Act provide for discretionary and mandatory intervention by provincial government in the event of “a serious financial problem” arising in a municipality.

¹¹⁶ See de Visser (2005:185-199) for a full discussion of interventions under Section 139; see also Craythorne (2006:36-39).

How do South Africa's constitutional provisions on decentralisation measure up to this dimension? Certainly, the constitution recognises decentralised government, and the authority of municipalities to govern within their spheres of jurisdiction is clearly spelled out. On the face of it, therefore, the South African local government sphere is provided with the constitutional security envisaged by this dimension. An intervention of the kind contemplated in Section 139 of the Constitution does, however, go to the root of the autonomy of the local sphere of government, enabling provincial government in effect to circumvent the local sphere. Such a power has been described as "potentially draconian" (de Visser 2005:185). Nonetheless, it is argued that "intervention is an integral part of an institutional framework that seeks development initiated at local level. It is a necessary corrective when a municipality fails to govern and thus jeopardises the enterprise of development" (de Visser 2005:185). It boils down, in effect, to a balancing act between the principle of autonomy and the need for effective oversight.

One view is that this provision represents the recognition of the reality that local government is inherently susceptible to failures that demand intervention; a somewhat more ominous view on an intervention of this kind is that it provides a means for senior governments to claw back power. It is certainly not impossible to conceive of the power of intervention being abused (de Visser 2006), whether in South Africa or elsewhere.¹¹⁷ Nonetheless, drastic though the power granted to provincial governments under Section 139 may be, it hardly constitutes a power of "arbitrary dismissal" by central or any other level of government, and, at least as far as the provisions of the Constitution are concerned, it cannot be said that municipalities exist only at the mercy of upper-level governments.

¹¹⁷ Manor observes that most politicians are preoccupied with maintaining and enhancing their own influence, and they fix on the influence which they lose through decentralisation. In such circumstances, many politicians try to claw back their power. This sort of jealousy, according to Manor, is the "greatest (and an omnipresent) threat to decentralization" (1999:61). It may be argued that interventions of the kind discussed above provide a potential means of clawing back power.

7.3 Size of Decentralised Unit

The size of the decentralised unit (dimension (ii)) is critical. The difficulty that will inevitably have to be encountered in a decentralisation process is how to determine that size. The South African solution was to establish the Municipal Demarcation Board (“MDB”) under the Municipal Demarcation Act.¹¹⁸ One of the functions of the MDB is to determine municipal boundaries in accordance with the Act and other appropriate legislation enacted in terms of Chapter 7 of the Constitution.¹¹⁹

Section 24 of the Municipal Demarcation Act sets out the objectives that the MDB should aim for when establishing the boundary of a municipality, namely, to establish an area that would-

- (a) enable the municipality for that area to fulfill its constitutional obligations, including-
 - (i) the provision of democratic and accountable government for the local communities;
 - (ii) the provision of services to the communities in an equitable and sustainable manner;
 - (iii) the promotion of social and economic development; and
 - (iv) the promotion of a safe and healthy environment;¹²⁰
- (b) enable effective local governance;
- (c) enable integrated development; and
- (d) have a tax base as inclusive as possible of users of municipal services in the municipality.

¹¹⁸ Section 155(3) of the Constitution required the passing of national legislation to establish criteria and procedures for the determination of municipal boundaries by an independent authority. This legislation took the form of the Municipal Demarcation Act.

¹¹⁹ Section 4(a) of the Municipal Demarcation Act.

¹²⁰ The provisions of section 24(a) of the Municipal Demarcation Act reflect almost exactly those of Section 152 (a) of the Constitution, which sets out the objects of local government.

Section 25 of the Act sets out a lengthy list of factors which must be taken into account in order to attain the objectives set out in Section 24.¹²¹

At the time that the demarcation of municipalities was carried out in 1999 and 2000, the MDB took the view that the size of the municipality in most cases correlates with capacity and viability (Savage 2008). According to that view, the smaller the municipality (as defined in terms of small population and narrow economic base) the greater the tendencies to experience capacity constraints and serious viability challenges, and these in turn undermine the constitutional and developmental obligations of a municipality.¹²² Research emanating from outside of South Africa tends to indicate, however, that larger municipalities do not necessarily provide the hoped-for benefits.¹²³

The MDB proposed to draw the boundaries of local municipalities widely so as to cover core urban areas and their large rural hinterlands, the rationale being that such arrangements would direct residual capacity that existed in core areas towards providing services in rural areas (Savage 2008). Of course, this assumed that such capacity existed in the first place, whereas in fact capacity was in many cases seriously lacking. A further concern was that the wide boundaries proposed by the MDB would adversely affect the ability of municipalities, whose financial viability would thereby be impaired, to raise private finance to expand services (Savage 2008). Other criticisms of the MDB's approach include that it lacked sound theoretical approaches; that it used commuting as a

¹²¹ These are (a) the interdependence of people, communities and economies; (b) the need for cohesive, integrated and unfragmented areas; (c) the financial viability and administrative capacity of the municipality to perform municipal functions efficiently and effectively; (d) the need to share and redistribute financial and administrative resources; (e) provincial and municipal boundaries; (f) areas of traditional rural communities; (g) existing and proposed functional boundaries, (h) existing and expected land use, social, economic and transport planning; (i) the need for coordinated municipal, provincial and national programmes and services, (j) topographical, environmental and physical characteristics of the area; (k) the administrative consequences of its boundary determination on municipal creditworthiness, existing municipalities, their council members and staff; and any other relevant matter; and (l) the need to rationalise the total number of municipalities within different categories and of different types to achieve the objectives of effective and sustainable service delivery, financial viability and macro-economic stability.

¹²² It is understood, however, that the MDB is presently investigating the question of how crucial the size of a municipality is and whether there is an ideal size for a municipality.

¹²³ See also Lemon 2002; Financial and Fiscal Commission 2010.

solution to address illogical spatial distortions inherited from the apartheid era; that it relied overly on the idea of economies of scale (and as a result used a somewhat arbitrary minimum geographical size); and that many areas were “over-bounded,” resulting in communities with little in common being flung together (Cameron 2006). In addition, certain external factors were ranged against the Board which compromised the demarcation process. Amongst these was, quite simply, a lack of time available to carry out the process before the impending local government elections.¹²⁴

The legacy of the MDB’s work gives rise to several issues. Several of these relate to the size of the average South African municipality. Prior to the commencement of an initial round of demarcations carried out by the MDB in 1999 and 2000, the country had 843 municipalities.¹²⁵ Following the demarcation process, which was largely driven by economies of scale imperatives, South Africa now has 283¹²⁶ municipalities which serve a population of close to 48 million people, and cover a land mass of 1,2 million square kilometres. Although there are enormous variations in size between municipalities, many of South Africa’s municipalities are, by global standards, vast in geographical extent and population. This size has inevitable consequences for administration. Logistical challenges arise in regard to servicing far-flung parts of a municipality. Finding and retaining staff in such locations present enormous difficulties for institutional capacity. Remoteness also erodes one of the primary purposes of decentralisation, which is bringing government closer to the people. A further major challenge constituted by the activities of the MDB is that a large number of municipalities are simply not financially viable, given their revenue bases. The MDB’s own research showed that at the time of the demarcation process, 102 new municipalities were weak and had limited financial resources (Cameron 2006). Subsequent developments have shown that many municipalities are so lacking in financial viability that they are largely, and sometimes almost entirely, dependent on grants.

¹²⁴ See Cameron (2006) for an account of the municipal boundary reorganisation process.

¹²⁵ These municipalities served mostly only “white” South Africa, to the exclusion of the greater geographical extent and population of the country.

¹²⁶ Made up of 6 metropolitan municipalities, 46 district municipalities and 231 local municipalities

In summary, it may be said that whilst the South African local government framework provides a comprehensive mechanism for determining the size and boundaries of decentralised local units, the application of that mechanism has proven to be difficult and has resulted in the creation of units which are in many cases of limited capacity and doubtful viability.

7.4 Democratic Process

Dimension (iii) is concerned with the existence of a functional democracy, which is usually seen as a prerequisite for effective decentralisation, the rationale being that decisions relating to local issues should be taken by representatives elected by local people. The student of the Constitution will find much to support the incorporation of this dimension into the South African local government framework. According to Section 1(d) of the Constitution, one of the values on which South Africa is founded is that of “universal suffrage, a national common voters’ role, regular elections, and a multi-party system of democratic government.” Section 157 (2) of the Constitution provides that elections to municipal councils must take place in accordance with national legislation, which must provide either for a system of proportional representation, or a system of proportional representation combined with a system of ward representation; subsection (3) provides that whatever system is chosen, it must result, in general, in proportionate representation; and subsection (4) provides that if it includes ward representation, delimitation of wards must be performed by an independent authority.¹²⁷ Section 158 sets out the requirements for membership of councils.

As it happened, the system of representation which was chosen was the combined proportional representation/ward representation model. The national legislation envisaged by the Constitution is the Structures Act, section 22 of which, read with Schedule 1 to the Act, sets out procedures for election to local and metropolitan councils, whilst Section 23

¹²⁷ This task was given to the Municipal Demarcation Board.

deals with election and appointment to district councils. The act also deals with the term of councils (which is 5 years), by-elections, and terms of office of councillors. The actual conduct of municipal elections is governed by the Local Government: Municipal Electoral Act, 27 of 2000, and elections are held under the auspices of the Independent Electoral Commission. It is not proposed to analyse the Structures Act insofar it relates to elections or the Municipal Electoral Act in any detail; suffice it to say, for present purposes, that formally the system of local government elections in South Africa duly reflects all of the elements contemplated in this dimension.

One issue relating to the democratic process has, however, become controversial; this is the question of holding municipal elections concurrently with national and provincial elections. At present, the electoral cycle is such that municipal elections are held some two years after national and provincial elections. There are, however, clear indications in national government circles that it is considered desirable to hold national, provincial and municipal elections simultaneously. The principal argument which has thus far been offered in support of holding elections simultaneously is that such an arrangement would be more cost effective. Those in favour of retaining the current staggered arrangement argue that it allows national and local issues to be contested independently of each other, and this allows proper expression of voters' preferences on local issues without their being unduly influenced by national election campaigns, which might otherwise overwhelm and dominate local issues.

7.5 Intergovernmental Relations

We have already encountered section 41 of the Constitution¹²⁸ which deals with principles of cooperative government and intergovernmental relations. For purposes of the present inquiry, which concerns dimension (iv), section 41(1)(g) is of particular interest to us, in that it provides that all spheres of government and all organs of state must co-operate with one another in mutual trust and good faith by fostering friendly relations, assisting

¹²⁸ See Section 7.2 of this Chapter.

and supporting one another, informing one another of, and consulting one another on, matters of common interest, coordinating their actions and legislation with one another, adhering to agreed procedures, and avoiding legal proceedings against one another. Section 41(2) goes on to require that an Act of Parliament must provide for structures and institutions to promote and facilitate intergovernmental relations and provide for appropriate mechanisms and procedures to facilitate intergovernmental disputes.

That requirement was fulfilled with the passing of the Intergovernmental Relations Framework Act in 2005.¹²⁹ The Act provides for various levels of intergovernmental structures. One such structure is the President's Coordination Council, whose functions include consulting with provincial government and organised local government on the implementation of national policy and legislation in provinces and municipalities, and the coordination and alignment of priorities, objectives and strategies across national provincial and local governments. Provision is also made for the establishment by cabinet members of National Intergovernmental Forums, whose objective is to promote and facilitate intergovernmental relations in functional areas for which the respective cabinet members are responsible. In an effort to promote provincial-municipal relations, the Act provides for the creation of provincial Intergovernmental Forums (known as Premier's Intergovernmental Forums). Their purpose is to facilitate and promote intergovernmental relations between provincial and local governments. Local government participation on these forums is provided for by means of representation through the provincial associations of local government, and by means of direct representation of municipalities through the mayors of metropolitan municipalities and of district municipalities. The final level of forum provided for by the Act is the district intergovernmental forum between a district municipality and the local municipalities within the district. As far as integrated service delivery is concerned, the Act provides a framework for "Implementation Protocols" as a mechanism by which two or more organs of state (including municipalities) cooperate in order to exercise a statutory power, perform a function, implement a policy or deliver a service.

¹²⁹ See Chapter 4.

The Intergovernmental Framework Relations Act is a relatively new piece of legislation, and it is premature to make any assessment of its effectiveness; in any event, there is little published information on the application of the Act.¹³⁰ In addition to the Act, however, the Constitution provides in Section 154 that national government and provincial government must support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions. Support of this nature is an important component of intergovernmental relations. National and Provincial governments have had ample time to implement this provision, but these governments have been less than effective in assisting municipalities to develop viable systems of management, operation and maintenance of infrastructure, and have done little to assist municipalities to improve standards of service delivery (Atkinson 2007). In some areas of governance (such as the introduction of integrated development planning), government has provided support, but in other respects (for example, development of policies, infrastructure maintenance programmes and information systems), local governments have largely been left to their own devices. According to Atkinson (2007), sectoral departments have, with few exceptions, barely begun to provide sustained assistance to municipalities. Municipalities have found themselves at the receiving end of new responsibilities, with little meaningful support from government departments. Atkinson suggests that the problem is not only due to weak systems of capacity building, but also to unresolved systems of intergovernmental allocation of powers and functions. As will be shown in this study,¹³¹ the nature and extent of powers and functions which municipalities are required to perform, despite their having been provided for in the Constitution, remain unclear.

Atkinson points out that in the unclear intergovernmental relations system which prevails, it is very difficult for new and inexperienced municipalities to comprehend their powers and functions, and to comprehend the financial and human resources required to exercise such functions; and if the terrain is so unclear, it is difficult to budget for staff

¹³⁰ The only published commentary regarding this Act of which the present author is aware is contained in Department of Provincial and Local Government (2008). This contains mostly an overview of the contents of the legislation with little information on its application.

¹³¹ See Chapter 11.

and capital expenditure, and almost impossible to develop technical competence in new developmental fields in the absence of assistance and mentoring by national and provincial departments. The consequences of unresolved intergovernmental relations are significant:

“The state architecture is still very uncertain, with unresolved questions regarding powers, functions and capacity-building responsibilities...Simply put, the demands on municipal services completely outstrip (municipalities’) capacity, and they have largely been left to cope with these demands on their own. The state has simply not comprehended the scale of the task of transforming municipalities into developmental institutions, or that of creating municipalities from scratch, particularly in the rural areas” (Atkinson 2007:72).

7.6 Concluding Remarks

In summary, it may be said that the local government framework reflects the dimensions of constitutional security, size of decentralised unit, democratic process and intergovernmental relations. The issue of constitutional security for a decentralised system of local government is thoroughly entrenched in the constitution, albeit subject to intervention by provincial governments. Although such intervention may be viewed as being “potentially draconian,” it is argued that it represents a necessary balancing between the demands of decentralisation and the recognition that local governments are susceptible to failure. The size dimension is also provided for both in the constitution and in national legislation with clear objectives and criteria for the demarcation of municipal boundaries; the actual process of establishing those boundaries has, however, created conditions which lead to institutional weakness. The democratic process provided for in the framework is, apart from the question of the timing of elections, uncontroversial. Finally, we have both constitutional and statutory provisions designed to promote intergovernmental relations. Whilst there is little information available to indicate whether the structures established by the relevant legislation are operating effectively, it

is clear that a vital aspect of intergovernmental relations - that of providing support to local government - leaves much to be desired.

Chapter 8

Evaluation: Executive Structure and Administrative Authority

8.1 Purpose of Chapter

This Chapter provides an evaluation of the local government framework in the context of dimensions of executive structure and administrative authority, dimensions (v) and (vi) respectively. These dimensions have in common the fact they are concerned with the means and mechanisms available to municipalities to enable them to govern, whether at the executive or administrative levels.

8.2 The Local Government Executive Structure

8.2.1 *Choice of Models*

It will be recalled that the choice of local executive models lies, in essence, between the single executive model (a directly elected mayor) and the plural executive model (mayor and committees elected from the council). South Africa has opted for the latter model, but has in turn developed variations on it. The Structures Act provides for three types of executives. The first is the collective executive system which allows for the exercise of executive authority through an executive committee in which the executive leadership of the municipality is collectively vested.¹³² The second is the mayoral executive system which allows for the exercise of executive authority through an executive mayor in whom the executive leadership of the municipality is vested and who is assisted by a mayoral committee.¹³³ The third system is the plenary system in which the exercise of executive

¹³² Provided for in Section 7(a) of the Structures Act and elaborated in sections 42 to 53 of the Structures Act.

¹³³ Provided for in section 7(b) of the Structures Act and elaborated in sections 54 to 60 of the Structures Act.

authority is limited to the council itself.¹³⁴ The plenary system is infrequently encountered and then mainly in municipalities with small councils, and this system need not detain us further.

The executive system which a municipality is determined according to the type of municipality as which it is established.¹³⁵ A somewhat curious provision is that the type of municipality is determined by the Provincial Member of the Executive Committee responsible for local government when the municipality is established under section 12 of the Structures Act. Depending on the type of municipality as which it is established, it may either have a collective executive system or a mayoral executive system. In effect, therefore, the executive system used in a municipality depends on the decision of the relevant provincial government, and not on the municipality itself.

8.2.2 *Key Components*

The executive structure of any municipality reflects an elaborate inter-relationship between various structures, office bearers and its administrative arm. The key components of this structure are the office of the mayor, the office of the speaker, committees, and the municipal manager. These components are discussed below.

(i) Mayors and executive or mayoral committees: In a collective executive system, political parties represented in the council are also represented on the executive committee, with proportionality being the guiding principle. One executive council member is elected to serve as mayor, who presides over meetings of the executive committee and performs such other functions as may be assigned by the council or the executive committee. The executive committee members report not to the mayor but to the council. In the executive mayoral system, by contrast, members of a mayoral committee are appointed by the executive mayor and report directly to and are

¹³⁴ Provided for in section 7(c) of the Structures Act.

¹³⁵ The types of municipalities are provided for in sections 8, 9 and 10 of the Structures Act.

accountable to the mayor, who may dismiss them. It will be immediately appreciated that the choice of executive system will influence power relationships within a municipality. An executive mayor is a large presence in his or her particular municipal pond. A mayor in a collective executive system may, by contrast, be subject to the dictates of the executive committee. It should be kept in mind that the powers and functions imposed on an executive committee¹³⁶ are much the same as those imposed on an executive mayor,¹³⁷ and as a result, enormous powers are concentrated in a single office in the case of an executive mayor. This in turn has consequences for effective and efficient action on the part of the executive. In either system, the mayor is the head of the executive and is the link between the council and the administration.

(ii) Committees of the Council: A municipality's committee system and the manner in which it is applied can have a considerable influence on the effectiveness of the municipality as a whole. Apart from executive or mayoral committees, a municipality may establish committees "necessary for the effective and efficient performance of any of its functions and the exercise of any of its powers."¹³⁸ Such a committee is appointed by a council from amongst its members, and the council determines its function and delegates duties and powers to it. In addition, a council may appoint "committees of councillors to assist the executive committee or executive mayor."¹³⁹ Again, it immediately becomes clear that the extent to which committees are appointed, and the type of committees which are appointed, have implications for the accountability of the executive to the council.

(iii) The Speaker: An office which is an innovation in South African local government is that of the Speaker. In the previous dispensation, the council would have been chaired by the mayor. The greater executive burden placed on the mayor under the current

¹³⁶ Section 44 of the Structures Act.

¹³⁷ Section 56 of the Structures Act.

¹³⁸ Section 79 of the Structures Act.

¹³⁹ Section 80 of the Structures Act.

arrangement gave rise to the perception that the task of chairing the council should be assigned to a more neutral figure, and hence provision was made for the office of the Speaker.¹⁴⁰ The Speaker's primary functions relate to presiding at meetings, disciplinary issues, and specifically assigned duties. It is common practice to delegate to the office of the Speaker responsibilities concerning councillor support, community participation (de Visser 2009) and particularly, the responsibility of supervising the ward committee system. These roles are highly political in nature, and there exists a real danger that speakers may not limit themselves to organisational duties and become active participants, "often to the chagrin of the municipal executive" (de Visser 2009, section 5). In addition, the councillor support function may give rise to the practice of petty politics (de Visser 2009) with the power to approve activities by councillors, a useful tool in the hands of an ambitious Speaker. Importantly, it should also be kept in mind that unlike the national and provincial legislatures, municipal councils have both a legislative and an executive function. The fact that the holder of a supposedly neutral office presides over a body with executive functions must inevitably lead to that office playing an executive role which may lead to tensions with structures and office bearers whose roles are more overtly of an executive character (de Visser 2009). In short, strictly speaking, the Speaker is not a member of the executive, but the office can and often does play a leading role in the executive function of a municipality.

(iv) The Municipal Manager: Although the municipal manager forms part of the administration rather than the council, the office is a vital one and together with that of the mayor, it provides the link between the council and the administration. The municipal manager is the head of the administration of a municipality with extensive powers as set out in Section 55 of the Systems Act. A municipal manager is appointed by the municipal council,¹⁴¹ as are the managers directly accountable to him or her.¹⁴² This arrangement was intended to provide for a senior management structure in the municipality that

¹⁴⁰ Provided for in the Structures Act, sections 31 to 34.

¹⁴¹ Structures Act, Section 82

¹⁴² Systems Act, Section 56

understands and operates in unison with its political principals in the executive of the municipality (de Visser 2009). Whatever the advantages of such an arrangement, the disadvantages are obvious. Senior managers are subject to the vagaries of council politics, which results in dismissals, suspensions and sidelining of officials who may not be in favour with the party or faction in power at the time. It also results in undue pressure being placed on officials, creating tensions between the dictates of good governance and party-political demands. Furthermore, appointments may become politically motivated, with party or factional loyalties becoming more important than merit as criteria for appointment (de Visser 2009; Atkinson 2007).

8.2.3 *A Mechanism to Regulate Relationships*

It will be readily appreciated that unless there is a mechanism which regulates the relationship between these structures, office bearers and officials, competing agendas might rapidly render a municipality dysfunctional. This difficulty has been anticipated by legislation, in this case, in the form of Section 53 of the Local Government: Systems Act (“Systems Act”), which requires that each municipality define in precise terms, by way of separate terms of reference, the specific role and area of responsibility of each political structure,¹⁴³ each political office bearer¹⁴⁴ and the municipal manager. It provides that when defining the respective roles and areas of responsibility, the municipality must determine:

- The relationships amongst each structure, office bearer and the municipal manager, and the manner in which they interact;
- Appropriate lines of accountability and reporting;

¹⁴³ “Political structure” is defined in the Systems Act as “the council of the municipality or any committee or other collective structure of a municipality elected, designated or appointed in terms of a specific provision of the Municipal Structures Act.”

¹⁴⁴ “Political office bearer” is defined in the Systems Act as “the speaker, executive mayor, deputy executive mayor, mayor, deputy mayor or a member of the executive committee as referred to in the Municipal Structures Act.”

- Mechanisms, processes and procedures for minimising cross-referrals and unnecessary overlapping of responsibilities;
- Mechanisms, processes and procedures for resolving disputes between them;
- Mechanisms, processes and procedures for interaction with staff members and between councillors and staff and the municipal manager.

Although such a definition of roles and responsibilities might be complex, it is immediately obvious that it serves a vital function in promoting executive effectiveness, and that it should be one of the priorities for municipalities to develop such an instrument. In a sense, it serves as a type of “mini-constitution” of the municipality, governing relations between key players and structures. This requirement is an example of appropriate decentralisation in theory, with national legislation setting out in broad outline a mechanism for achieving a governance outcome, with the sub-national unit being left to determine the details of the mechanism and to implement it. Unfortunately, however, as is so often the case, the good intentions of the legislature have been largely ignored, as is shown in the next sub-section.

8.2.4 *Implementation in Practice*

Inquiries were made at the 37 municipalities in the sample in order to ascertain the extent to which they complied with the requirement relating to the adoption of definitions of roles and responsibilities. It emerged that only 9 could indicate (with certainty) that they had adopted definitions of roles and responsibilities as required by the Systems Act (See Appendix B (Table 2), Column (i)). The remainder either:

- did not have any document at all incorporating such definitions (22 cases); or
- were in the process (some 8 or 9 years after the relevant legislation came into force) of developing definitions of roles and responsibilities (3 cases); or
- indicated that such an instrument had been developed but it could not be located (3 cases).

No reasons were forthcoming as to why definitions of roles and responsibilities had not been adopted.

The dysfunctional nature of the council, executive, other structures and administration (and the poor relationship between them) of many a municipality in South Africa is notorious. A recent study¹⁴⁵ highlights a number of disturbing elements which undermine the effective carrying out of executive functions, including a lack of council oversight over the administration; a lack of appropriate council structures; interference by councillors in the administration; fraught relationships between mayor, speaker, chief whip¹⁴⁶ and councillors; and interference by political parties. In addition, it was found in a report of the Parliamentary Ad Hoc Committee on Coordinated Oversight on Service Delivery that there is a need to clarify the respective roles of council structures, office bearers and officials, the lack of clarity having resulted in “paralysis” in certain municipalities; this report also pointed to an “overwhelming lack of clarity” on the roles of mayors, speakers and chief whips, as well as the relationship between politicians and officials.

The findings referred to above are supported by the present author’s own observations regarding relations between structures and office bearers in many municipalities. Institutional paralysis, in-fighting, poor oversight, duplication of activities, and a lack of understanding of the roles of structures and office bearers were frequently complained of.

To what extent can the existence of a definition of roles and responsibilities prevent the situation described above? At a minimum, it is submitted, it would provide a framework which, if properly constructed and duly observed, would ensure the existence of

¹⁴⁵ Conducted by de Visser *et al* (2009).

¹⁴⁶ Much is made in some quarters of the role of council whips, especially the chief whip. The office of whip is not provided for by statute, and it appears that it exists solely by virtue of a practice which has evolved in municipalities, which have borrowed it from senior legislatures. Informal though the office may be, it has been argued that in many cases, there is enormous conflict between chief whips, mayors and speakers. It is open to debate whether this reflects a genuine structural problem or whether it is merely a manifestation of internal party power plays.

appropriate relationships, proper accountability, clear definition and performance of roles, minimising of disputes, and proper interaction with the municipal administration. Of course, this assumes that if such a definition of roles and responsibilities exists in a municipality, it would actually be implemented. The mere existence of such an instrument does not ensure application. In fact, of the 9 municipalities in our sample which had adopted such a definition, it was indicated in 5 cases that theirs were not properly implemented, with at least occasional – and sometimes frequent - deviations from the channels and roles provided for in the instrument. The point remains, however, that implementation must be preceded by adoption, and in the absence of such an instrument, a functional relationship between the various structures and office bearers cannot be established.

8.3 Administrative Authority

8.3.1 De Iure Administrative Authority

With dimension (vi) - administrative authority - we are concerned with whether the decentralised unit has the right to manage its own affairs. Once again, our starting point in this inquiry lies with the constitution, which provides in Section 151(3) that “a municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in the Constitution.” Section 151 (4) goes on to provide that the national or a provincial government may not compromise or impede a municipality’s ability or right to exercise its powers or perform its functions.¹⁴⁷ Finally, Section 160 of the Constitution provides, amongst other things, that a municipal council may make decisions concerning the exercise of all the powers and performance of all the functions of the municipality, and may employ personnel that are necessary for the effective performance of its functions.

¹⁴⁷ This provision is largely repeated in section 3(2) of the Systems Act.

A municipality is legally defined as an organ of state exercising legislative and executive authority within a determined area, and consists of the political structures and administration of the municipality, and (and this is an interesting innovation) the community of the municipality. It functions in accordance with the political, statutory and other relationships between its political structures, political office bearers and administration and its community; and has a separate legal personality which excludes liability on the part of the community for the actions of the municipality.¹⁴⁸

Mirroring section 151(3) of the Constitution, section 4 of the Systems Act provides that a municipal council has the right to govern on its own initiative the local government affairs of the local community; the Systems Act goes on to provide that a council has the right to exercise the municipality's executive and legislative authority, and to do so without improper interference; and to finance the affairs of the municipality by charging fees for services and imposing surcharges on fees, rates on property and, to the extent authorised by national legislation, other taxes, levies and duties.

On the face of it, the legislative framework supports the contention that municipalities in general terms enjoy clear *de iure* administrative autonomy. Three areas in particular, however, bear closer examination. They are (i) autonomy of a municipality to establish its own systems for the administration of its own affairs and the performance of its functions; (ii) the appointment of staff; and (iii) financial administration. These are discussed in turn in subsections 8.3.2, 8.3.3 and 8.3.4 below. It should be noted at the outset that this discussion is concerned only with the extent to which the legislative framework deals with these areas of administrative authority. Accordingly, the discussion does not involve an examination of actual practice in municipalities. Where aspects of administrative authority are relevant to actual practice, they are discussed elsewhere, for example in chapters 9, 10 and 12.

¹⁴⁸ Systems Act, section 2

8.3.2 *The Autonomy of a Municipality to Establish Systems*

Municipalities are required by the Systems Act to establish systems, mechanisms, processes and procedures in relation to a number of specified aspects of its administration, in particular, in regard to community participation, integrated development planning, performance management, municipal services and credit control and debt collection. In the context of decentralisation, there can be little quibble with the fact that municipalities are required to develop and implement these mechanisms and procedures. What is a matter of concern, however, is the fact that there are embedded in the legislation certain elements which betray recentralising tendencies. Various provisions in the Systems Act give the minister in central government who is responsible for local government the power to make regulations and issue guidelines on a wide range of issues - for example, in relation to:

- community participation (including regulations and guidelines in regard to minimum standards for funding and any matter that may facilitate the participation of the local community in the affairs of the local community);¹⁴⁹
- integrated development planning (including regulations and guidelines regarding the detail of integrated development plans, criteria to be taken into account when planning, drafting, adopting or reviewing integrated development plans, and the detail of the process for the planning, drafting, adoption and review of integrated development plans);¹⁵⁰
- performance management (including regulations and guidelines to provide for incentives to ensure that municipalities establish performance management systems, the setting of key performance indicators, the setting of a framework for performance targets, systems for monitoring and measurement of performance systems, and the like);¹⁵¹

¹⁴⁹ Section 22 of the Systems Act.

¹⁵⁰ Section 37 of the Systems Act.

¹⁵¹ Section 49 of the Systems Act.

- local public administration and human resources (including regulations and guidelines for the setting of uniform staff establishments, municipal staff systems and procedures, any other matter concerning personnel administration, the establishment of job evaluation systems, remuneration and other conditions of service for members of staff, the measuring and evaluation of staff performance, and corrective standards in the case of substandard performance);¹⁵²
- municipal services (including regulations and guidelines regarding municipal tariff policies, the subsidisation of tariffs for poor households, measures against malpractice in selecting and appointing service providers, standard draft service delivery agreements and performance guarantees by service providers);¹⁵³
- credit control and debt collection (including regulations and guidelines regarding user agreements, the rendering of accounts, action that may be taken to secure payment of arrear accounts, extensions for the payment of arrears, and any other matter that may facilitate effective and efficient systems of credit control).¹⁵⁴

The power to make regulations on a wide range of issues which may affect the administrative authority of municipalities certainly encroaches on the decentralised character of local government. Whilst ministerial power to make regulations pursuant to a statute is a common legislative device (and it must be emphasised that it is not intended to suggest here that the use of such a device in the Systems Act is contrary to the Constitution¹⁵⁵), it is somewhat ironic that this power should be so extensive in a statute which purports to give effect to the precepts of decentralisation.¹⁵⁶ These regulations

¹⁵² Section 72 of the Systems Act.

¹⁵³ Section 86A of the Systems Act.

¹⁵⁴ Section 104 of the Systems Act.

¹⁵⁵ It is important to remember that Section 151(3) of the Constitution provides that “a municipality has the right to govern, on its own initiative, the local government affairs of its community, *subject to national and provincial legislation...*” See section 7.2 of Chapter 7.

¹⁵⁶ Although Section 120 of the Systems Act does provide that the minister may make such regulations and issue guidelines only “after consultation with organised local government representing local government nationally,” this hardly constitutes local participation in any democratic legislative process. It should also be noted that guidelines are not binding (Section 120(6)(a)); but regulations are certainly binding, and they may even prescribe penalties for non-compliance (Section 120 (3)).

relate to issues which influence the administration of local government and which may affect local citizens closely but over which they have absolutely no say. It may be argued that this is entirely contrary to the basic premises underlying decentralisation. Perhaps this reflects the jealousy with which central governments tend to cling to their powers, or betrays a distrust on the part of central government in the ability of local government to manage its own affairs.¹⁵⁷

8.3.3. *The Appointment of Staff*

It will be recalled that in the discussion of the dimension of administrative authority in Chapter 6 that one of the key issues concerned the right of the local government to hire personnel. The Local Government: Structures Act (“Structures Act”) and the Systems Act provide respectively for the appointment of municipal managers¹⁵⁸ and managers directly accountable to municipal managers.¹⁵⁹ According to these provisions as presently formulated, these senior officials are appointed entirely at the discretion of the council, whilst other staff members are appointed by the municipal manager;¹⁶⁰ in other words, staff appointments are entirely an internal municipal matter, with municipalities being responsible for, and having the powers for, recruiting, disciplining and dismissing their own staff.¹⁶¹ As such, municipal employees do not form part of the civil service and are not subject to national or provincial civil service regulation. From time to time, however,

¹⁵⁷ The potential that these regulations have to erode the decentralised character of local government has been long recognised, at least in certain quarters. During the Second Reading Debate on the Municipal Systems Bill, Mrs GM Borman (DA) said that “...the numerous ministerial guidelines and regulations institute a rigid, top-down centralised power framework. The proposals give the Minister wide, sweeping powers to interfere in the day-to-day affairs of municipalities. The Minister will be able to poke his nose into everything from the remuneration of municipal staff to the seizure of property...past experience has shown that when Ministers are given the power to override normal procedures, the temptation to use and abuse them is too great to resist.” (Proceedings of the House of Assembly, Thursday 21 September 2000, col.5867). Whilst relatively few regulations have to date been made under the Systems Act, the fact that extensive provision exists for them is in itself cause for concern.

¹⁵⁸ Section 82 of the Structures Act.

¹⁵⁹ Section 56 of the Systems Act.

¹⁶⁰ Section 55(1)(e) of the Systems Act .

¹⁶¹ See Chapter 9 for a discussion on the statutory requirements relating to the appointment of staff, and the application of those requirements in practice.

the possibility of creating a single public service has been raised by central government. This proposal, which involves the unification of national, provincial and municipal staffs into a single public service, appears to be a direct response to the lack of institutional capacity at municipal level. The rationale behind it is that it will deepen integrated service delivery, strategically align the institutions that comprise the machinery of the developmental state, and create common norms and standards for human resource management. It implies the adoption of a common wage policy across all spheres of government, harmonised conditions of service, common norms and standards of human resource management, and mobility (Department of Public Service and Administration 2007). Whether the establishment of a single unified public service will have an impact on the functions, skills and competencies needed for local government is open to question. It is, however, clear that the inevitable consequence of the implementation of such an arrangement would be to reduce the administrative autonomy of municipalities, and result in a further encroachment on the principles of decentralisation.¹⁶²

8.3.4 *Financial Administration*

The Local Government: Municipal Finance Management Act (“MFMA”), which was enacted in response to the fiscal crisis which had gripped local government almost continuously under the new dispensation, imposes even tighter central control over the administration of municipal finances.¹⁶³ Virtually every aspect of financial management – from the operation of bank accounts, to preparing of budgets, to incurring of debt, to general financial management, and to supply chain management, is closely regulated

¹⁶² In 2007 it was announced that it was intended to complete legislation within 18 months for the establishment of a single public service (Department of Public Service and Administration 2007). As at the time of writing, such legislation had not, however, been enacted.

¹⁶³ During the second Reading Debate on the Municipal Finance Management Bill, Dr G Woods (IFP) remarked of the bill: “It became clear...that its paternalistic character emerged from a belief that municipal officials are generally incompetent, dishonest, lazy and devious, leading to a Bill designed to control and macro(*sic*)-manage these devious officials, rather than the opposing new-era approach, which is to stimulate human potential towards the attainment of results” (Proceedings of the House of Assembly, Thursday 11 September 2003, cols.6504-6505) It is not clear whether the “new-era” approach to which Woods was referring was New Public Management, which by then was no longer so new. That said, it is difficult to find any hint of the principles of decentralisation in it. In fact the MFMA tends to promote efficiency at the expense of decentralisation.

either by the MFMA itself or by regulations made thereunder.¹⁶⁴ This is not to suggest that, given the state of municipal finances, this close regulation is not necessary; on the contrary, many would argue that the MFMA needs to be more strictly applied, and that decision makers in a decentralised structure should be made responsible for the financial consequences of their decisions. This objective, it is argued, would be facilitated by the existence of the existence of a set of laws relating to budgeting, financial reporting, procurement and the like (Niksic 2004).

It is arguable that, however necessary it may be to regulate financial management in local government by means of national legislation, interference of this nature could well amount to a contradiction of the objectives of decentralisation. A particular cause for concern is the fact that in a supposedly decentralised system, such strict regulation, whether pursuant to the MFMA or the regulations which may be made under the Systems Act, is necessary in the first place. It speaks, perhaps, of a country which is not ready for decentralisation and in which sub-national governments require close control from central government.

8.4 Concluding Remarks

The executive structure of a municipality is a key dimension of decentralisation and consists of a complex set of relationships between various office bearers, structures and officials. A means of regulating those relationships is essential to ensure an effective executive function, and whilst statutory provision has been made for a mechanism to regulate those relationships, we see that in practice, municipalities have often ignored this

¹⁶⁴ The MFMA relies to a large extent on regulations made by the Minister of Finance as instruments of implementing or enforcing policy; these regulations are often quite sweeping in scope. Included amongst these regulations are the Municipal Investment Regulations of 2005 (published under GN R 308 in Government Gazette 27431 of 1 April 2005), the Supply Chain Management Regulations of 2005 (published under GN 868 in Government Gazette 27636 of 30 May 2005), Municipal Regulations on Debt Disclosure of 2007 (published under GN R 492 in Government Gazette 29966 of 15 June 2007), the Municipal Regulations on Minimum Competency Levels of 2007 (published under GN R 493 in Government Gazette 29967 of 15 June 2007), and the Municipal Budget and Reporting Regulations of 2009 (published under GN R 393 in Government Gazette no. 32141 of 17 April 2009).

mechanism and have failed to adopt it. The consequences for effective governance are obviously negative. As far as administrative authority is concerned, we note that both the Constitution and subsequently enacted legislation (in the form of the Systems Act) establish a framework for notional administrative autonomy which is consistent with a decentralised system of governance, but that by means of both regulatory and statutory devices, the decentralised character of that system is threatened. The juxtaposition of the dimensions of the executive structure and administrative autonomy illustrate the twin dangers presented to decentralisation by the inability or unwillingness on the part of municipalities to implement essential features of decentralisation, and the tendency of central government to reassert its powers over local government.

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Chapter 9

Evaluation: Institutional Capacity

9.1 Purpose of Chapter

Institutional capacity - dimension (vii) - is about the ability of municipalities to perform appropriate tasks effectively, efficiently and sustainably (Cloete 2002). Municipalities depend on the organisational experience and proper conduct of people who are capable of managing large organisations, producing and implementing substantial budgets, implementing complex legal requirements and taking decisions on sophisticated technical matters (Atkinson 2007). Capacity building has often been cited as the principle obstacle in furthering the decentralisation process. It follows that an essential dimension of a decentralised system is the provision of a mechanism for building and sustaining institutional capacity.

A heavy burden is placed on the capacity of a municipality to deliver. The Local Government: Systems Act (“Systems Act”) requires a municipality to establish and organise its administration within its administrative and financial capacity in a manner which enables it to achieve a daunting list of objectives.¹⁶⁵ Nonetheless, the Act makes extensive provision for systems and mechanisms designed to assist municipalities to

¹⁶⁵ Namely, the following objectives as required by Section 51 of the Systems Act: to (a) be responsive to the needs of the local community; (b) facilitate a culture of public service and accountability amongst staff; (c) be performance orientated and focused on the objects of local government; (d) ensure that its political structures, political office bearers and managers and other staff members align their roles and responsibilities with the integrated development plan; (e) establish clear relationships, and facilitate co-operation, coordination and communication, between its political structures and political office bearers and its administration, and its political structures, political office bearers and administration and the local community; (f) organise its political structures, political office bearers and administration in a flexible way in order to respond to changing priorities and circumstances; (g) perform its functions through operationally effective and appropriate administrative units and mechanisms, including departments and other functional or business units; and when necessary, on a decentralised basis; (h) assign clear responsibilities for the management and co-ordination of these administrative units and mechanisms; (i) hold the municipal manager accountable for the overall performance of the administration; (j) maximise efficiency of communication and decision-making within the administration; (k) delegate responsibility to the most effective level within the administration; (l) involve staff in management decisions as far as is practicable; and (m) provide an equitable, fair, open and non-discriminatory working environment.

achieve these ends. This chapter will focus on the application of mechanisms aimed at advancing institutional capacity insofar as it relates to staff matters, namely, on the subjects of staff establishments, human resources development, capacity building and professional norms and standards, which are dealt with in sections 9.2 to 9.5 respectively, and on performance management, which is dealt with in section 9.6.

9.2 Staff Establishments

9.2.1 Framework

The Systems Act¹⁶⁶ provides that within a policy framework determined by the council and subject to legislation, a municipal manager must approve a staff establishment for the municipality, provide a job description for each post on the staff establishment, attach to those posts the remuneration and other conditions of service as may be determined in accordance with applicable labour legislation, and establish a process or mechanism to regularly evaluate and, if necessary, review the staff establishment.

9.2.2 Practice

Inquiries were made at the municipalities in the sample to ascertain the extent of compliance with the above requirements of the Systems Act. Of the 37 municipalities, it emerged that:

- with one exception, none had, or at least was aware of having, a policy framework relating to the staff establishment as determined by the council (See Appendix B, Column(ii));

¹⁶⁶ In Section 66.

- notwithstanding the absence of policy frameworks, every municipality in the sample had a staff establishment approved by the municipal manager (See Appendix B, Column (iii));
- in 18 cases, however, the staff establishment was described as inadequate, in that it did not reflect the purported staffing needs of the municipality;
- in 22 cases, it was indicated that the staff establishment (whether it was described as adequate or not) was in any event not adhered to, in that appointments were made to the staff which were not provided for in the staff establishment,¹⁶⁷ or with appointments being made to positions for which the appointees were clearly not qualified;¹⁶⁸
- in 20 cases, adequate job descriptions had not been provided (See Appendix B, Column (iv));¹⁶⁹
- conditions of service were attached in all cases insofar as they were contained in Collective Agreements (See Appendix B, Column (v));¹⁷⁰
- only one municipality had a formal process or mechanism for evaluating and reviewing its staff establishment (See Appendix B, Column (vi))

¹⁶⁷ In one case, it was reported that the practice was to make temporary appointments which were continuously renewed, in the belief that that would avoid compliance with the staff establishment requirements. In a number of other cases, persons who had been temporarily employed were appointed to permanent positions (even when the positions were not provided for in the staff establishment) due to political pressure.

¹⁶⁸ The present author recalls the Chief Financial Officer of a small, rural municipality complaining about the inappropriate qualifications of staff in the finance department. One staff member apparently held a certificate in fire-fighting, and another a degree in theology. Given the state of the municipality's finances, and that a visit by the Auditor-General was looming, perhaps the CFO should have appreciated that these two individuals were probably admirably qualified, each in his own way, to deal with the crisis.

¹⁶⁹ It was reported in one case that job descriptions were "tailored" so as to correspond with the qualifications of applicants for posts who were deemed politically acceptable.

¹⁷⁰ Service Conditions are largely contained in the South African Local Government Bargaining Council Main Collective Agreement, as supplemented by divisional agreements. These agreements, as well as the grievance procedures and disciplinary procedures referred to later in this chapter, are renegotiated from time to time between the South African Local Government Association (a body which represents organised local government) and municipal trade unions, under the auspices of the Bargaining Council. Section 71 of the Systems Act requires that municipalities comply with "any collective agreements concluded by organised local government within its mandate on behalf of local government in the bargaining council established for municipalities."

A common feature amongst municipalities in the sample was the high rate of vacancies on the staff establishments. As far as senior staff members were concerned, it was found that of the 37 municipalities in the sample:

- 10 had municipal managers who were in acting positions (See Appendix B, Column (vii)) ;¹⁷¹
- 30 did not have full complements of permanently appointed managers directly accountable to the municipal manager (in two cases, ALL such managers were serving in an acting capacity, whilst in the remaining 28 of these 30 cases, 25% to 60% of such posts were filled by persons serving in an acting capacity or were not filled at all) (See Appendix B, Column (viii)).¹⁷²

An attempt was made to quantify the overall vacancy rates (i.e. at all levels), but the information provided by municipalities in many cases proved to be unreliable. Reliance was therefore placed in those cases on the findings of Municipal Demarcation Board assessment for 2008/9; in summary, vacancy rates in the sample of 37 municipalities rates were as follows:

- 3 (or 8%) had vacancy rates of more than 40% (ranging from 43% to 48%);
- 7 (or 19%) had vacancy rates of 30% or more;
- 17 (or 46%) had vacancy rates of 20% or more
- 25 (or 68%) had vacancy rates of 10% or more (See Appendix C (Graph (1))).

12 of the municipalities (or 32%) had vacancy rates of less than 10%; 2 had zero vacancy rates and one even had a 106% occupancy rate. In the latter case, as also in 6 other of these 12 cases, it was indicated that the high occupancy rates were due at least in part to

¹⁷¹ As at March 2010, countrywide, 87% of municipal manager posts were reported to be filled. The situation varied greatly from province to province, however, with all posts in Kwa-Zulu Natal being reportedly filled, but only 71%, 74% and 80% of posts being filled respectively in Mpumalanga, Gauteng and Limpopo (SA Local Government Briefing, September 2010, p3).

¹⁷² As at March 2010, countrywide, 86% of posts for managers directly accountable to the municipal manager were reported to be filled (the SA Local Government Briefing, September 2010, p3).

persons being appointed to positions which did not exist in the staff establishment - in other words, they were not authorised appointments.¹⁷³

The reasons given by individual municipalities for the large vacancy rates were many and varied. Amongst them was the reluctance of qualified staff to live in distant, rural areas; the lack of qualified staff in general; allegedly low salaries; applicants being politically unacceptable to councillors; and insufficient cash resources to pay salaries, either due to posts not having been budgeted for in the first place, or because of shortfalls arising in salary budgets because of poor budgeting.

In the cases of several individual municipalities in the sample, it was clear that certain individual vacancies would have had little effect on the functionality of the institutions concerned, as several posts provided for in municipal staff establishments appeared to be sinecures or to contribute very little to the effectiveness of the institution concerned. In most cases, however, vacancies lead to genuine operational dysfunctionality. In most of the municipalities in our sample, inadequate staff complements were referred to as being a major cause of the inability of municipalities to perform their functions. There was clearly a lack of priority skills which result in high vacancy rates, a situation exacerbated by the filling of posts in an acting capacity or by officials occupying dual positions.¹⁷⁴ Often, tasks were performed on an *ad hoc* basis by personnel filling unrelated posts because no proper appointment could be made for the position in question. For example, a situation which was encountered on more than one occasion in the course of conducting the present study was the use of traffic officers to serve as temporary fire-fighters in the absence of properly trained personnel. In addition, the simple fact that job descriptions were not provided in many cases gave rise to complaints that staff members were unsure as to their roles, which reportedly led to uncertainty and low morale.

¹⁷³ It is worth noting that the National Treasury has found that the practice of appointing persons to positions which are non-existent on staff establishments is widespread (National Treasury 2008).

¹⁷⁴ The problem is more pronounced in rural areas, where there is a lack of training and education centres (Parliamentary Ad Hoc Committee on Coordinated Oversight on Service Delivery 2010).

9.3 Human Resource Development

9.3.1 Framework

The Systems Act ¹⁷⁵ requires a municipality to develop and adopt appropriate systems and procedures to ensure fair, effective and transparent personnel administration, including systems and procedures for the recruitment, selection and appointment of staff; the service conditions of staff; the supervision and management of staff; the monitoring, measuring and evaluation of staff performance; the promotion and demotion of staff; the transfer of staff; grievance procedures; disciplinary procedures; the investigation of allegations of misconduct and complaints against staff; and any other matter prescribed by regulation.¹⁷⁶

Grievance Procedures, disciplinary procedures and, to a large extent, service conditions, of staff are determined by the South African Local Government Bargaining Council and are applicable to all municipalities. For present purposes, their application in all municipalities is assumed. The other systems and procedures are, however, left to individual municipalities to develop and adopt.

9.3.2 Practice

It should be noted that whilst municipalities are permitted to develop their own systems tailored to their own requirements, the Systems Act provides that they “*must* develop and adopt” them - in other words, development and adoption are not optional. That notwithstanding, the following emerged regarding the development and adoption of systems relating to human resources development in the 37 municipalities in our sample:

¹⁷⁵ Section 67.

¹⁷⁶ This study did not inquire into “other matter prescribed by regulation.”

- *the recruitment, selection and appointment of staff*: All but 4 municipalities had adopted systems and procedures for this function (See Appendix B, Column (ix)); it was indicated in 18 cases, however, that such systems were inadequate (by reason of being poorly drafted, or out of date); in 19 cases, it was indicated that, whether adequate or not in form, the systems were improperly applied. For example, in one case, it was indicated that positions were filled at the request of councillors or office bearers without any reference to the staff selection procedure; in another case, the staff selection procedure was almost entirely bypassed with all appointments (except for the lowest positions) being made entirely by the mayor or his delegate. It should be noted, however, that whilst a large number of municipalities reported improper application of the procedures, very few were willing to be specific as to the way in which they were improperly applied.¹⁷⁷
- *the supervision and management of staff*: Only two municipalities had such systems in place (See Appendix B, Column (x));
- *the monitoring, measuring and evaluation of staff performance*: 33 of the 37 municipalities had systems relating to staff performance, but in only three cases did these systems apply across the board to all staff; in all other cases, they applied only to senior management (See Appendix B, Column (xi));¹⁷⁸
- *the promotion and demotion of staff*: Only two municipalities had systems relating to the promotion and demotion of staff (See Appendix B, Column(xii)) ;

¹⁷⁷ A phenomenon which is encouraged by the absence of or improper application of recruiting policies is that of “cadre deployment,” a practice whereby individuals loyal to the governing elite are “deployed” to government positions not necessarily by reason of their suitability for those positions, but because of their political reliability. This practice has become quite notorious in South Africa and is particularly widespread within the sphere of local government, this notwithstanding the fact that it is not permitted by legislation and is of doubtful constitutionality (see *Mlokoti v Amathole District Municipality* 2009(6) SA 354). In this practice, normal recruitment practices are ignored and the individual concerned is installed in the position at the instance of a party structure, usually a “deployment committee,” with the cooperation of officials and councillors, who consider it in their best interests to comply with the deployment committee’s wishes. Whilst the practice is no doubt not unique to South Africa, the term “cadre deployment” probably is. The consequences of this practice for the proper administration of municipalities are obvious, and it is frequently blamed as one of the leading causes of maladministration in local government in South Africa.

¹⁷⁸ The fact that these evaluation processes are applied to senior staff at all is probably not unrelated to the fact that according to Section 57(4B) of the Systems Act, bonuses based on performance (as is the case with Municipal Managers and Managers who are directly accountable to Municipal Managers) may be paid only after an evaluation of performance and approval by the council concerned.

- *the transfer of staff*: only two municipalities had systems relating to the transfer of staff (See Appendix B, Column (xiii));
- *grievance procedures*: by virtue of grievance procedures having been adopted by the South African Local Government Bargaining Council, all municipalities in effect have a system for grievance procedures (See Appendix B, Column (xiv)); however, it was indicated in the cases of 18 of the 37 Municipalities in the sample that the grievance procedures were either not properly applied or ignored; in 10 other cases, no comment was forthcoming; only in 9 cases was it indicated that the grievance procedures were properly applied.
- *disciplinary procedures*: again, by virtue of disciplinary procedures having been adopted by the Local Government Bargaining Council, all municipalities in effect have systems for disciplinary procedures (See Appendix B, Column (xv))¹⁷⁹; however, application of the disciplinary procedures was considered to be “poor” in the cases of 21 of the municipalities in the sample; in 5 it was considered it “fair”, and in 2 it was considered it “good.” No opinion was expressed in the remaining 9 cases. In 14 of the cases in which the application of the procedures was considered to be poor, it was indicated that staff were inadequately trained to prosecute or chair disciplinary hearings. In 5 cases, it was indicated that disciplinary cases were not prosecuted due to disinterest or favouritism on the part of senior management, whilst at 2 municipalities the failure to prosecute cases was ascribed to “intimidation” - that is, of staff who were potential appointees as prosecutors or chairs and who had been warned (by unspecified persons) not to accept such appointment on pain of unpleasant consequences. In one case, it was indicated quite simply that a moratorium had been placed on disciplinary action, although no reason could be furnished for this.¹⁸⁰

¹⁷⁹ Senior managers (i.e. municipal managers and managers directly accountable to them) fall outside of the purview of the Bargaining Council and are not subject to the standard disciplinary procedures. Draft regulations providing for separate disciplinary procedures for senior manager were published for comment by the Department of Cooperative Governance and Traditional Affairs in November 2009, but at the time of writing, they had not been promulgated.

¹⁸⁰ Until recently, it was common practice amongst municipalities to appoint external experts to serve as prosecutors and chairs at disciplinary inquiries, due to the lack of internal capacity. The practice of appointing external experts has, however, been discontinued following changes to the disciplinary

- *the investigation of allegations of misconduct and complaints against staff*: one municipality in the sample had adopted a system to regulate this (See Appendix B, Column (xvi));
- *the dismissal and retrenchment of staff*: only one municipality had adopted a system to regulate the dismissal and retrenchment of staff (See Appendix B, Column (xvii)) .

It is striking to note that with very few exceptions, those systems described above which had actually adopted by municipalities had been developed, not internally by the institutions concerned, but by external consultants, and then usually with little, if any, input from municipal officials. The frequent result was that systems enjoyed little credibility amongst staff who, not having had any involvement in the process, often did not understand or appreciate the purpose and import of the systems concerned, and had little interest in ensuring the implementation of those systems. It was also apparent that there was a widespread lack of knowledge regarding the specific requirements of legislation regarding the development and implementation of mechanisms and systems relating to human resources development. This may explain to some extent the low levels of compliance with its requirements.

The practical consequences of the poor application of systems and mechanisms directed at human resource development were apparent in the majority of the municipalities in the sample. Complaints were frequently raised in the course of discussions with officials regarding inappropriate appointments, poor discipline, low morale, and ineffective staff.

procedures agreed in 2010 at the SA Local Government Bargaining Council. It remains to be seen what consequences this holds for the administration of discipline amongst municipal staff.

9.4 Capacity Building

The Systems Act requires that a municipality develop its human resource capacity to a level that enables it to perform its functions and exercise its powers in “an economical, effective, efficient and accountable way.”¹⁸¹

In the absence of any performance management or evaluation system that is meaningfully applied,¹⁸² it is difficult to assess in an objective fashion the extent to which local government meets the standards laid down by the Act. Officials at the 37 municipalities were, however, asked to assess their respective municipalities against the “economical, effective, efficient and accountable” criteria. Their responses indicated that:

- considered their level of compliance to be good;
- 16 considered their level of compliance to be fair;
- 15 considered their level of compliance to be poor.

It is immediately acknowledged that the responses reflect subjective views of the capacity of municipalities; nonetheless, it is instructive that such a large proportion considered their compliance “poor” or only “fair.” Although a number of municipalities indicated that, given the circumstances, their situations were “manageable,” most municipalities complained of a shortage of skills,¹⁸³ ranging from specific skills, to general management skills to literacy skills, which impaired their capacity to perform their powers and in “an economical, effective, efficient and accountable way.” The reasons given for this state of affairs are interconnected with the question of high vacancy rates discussed previously (including lack of funding, inability to attract and retain staff, and a country-wide lack of skills in general), inappropriate recruitment processes (including as a result of political

¹⁸¹ Systems Act, Section 66

¹⁸² See section 9.5 below.

¹⁸³ Skills which have been identified as lacking include strategic management (policy and leading, developing, monitoring and evaluating the IDPs); financial management; contract management with emphasis on good procurement practices; political and administrative leadership; project management; and adult basic education training and technical skills (Reddy and Maharaj 2008).

interference), poor training, poor matching of skills to the requirements of posts, and a lack of interest and commitment on the part of employees. There seems in many cases to be an air of resignation about the inability to enhance capacity at municipalities; as one official remarked, “It’s just part of the municipal environment - it always has been there and always will be.”

9.5 Professional Norms and Standards

An issue which has a strong bearing on institutional capacity is the quality of senior management. With three exceptions, there are, however, at the time of writing no professional norms or standards to which senior staff members are required to adhere. The first exception is to be found in section 82 (b) of the Local Government: Structures Act (“Structures Act”), in terms of which a municipal manager is under present arrangements appointed. This provides that a person appointed as a municipal manager must have the relevant skills and expertise to perform the duties associated with the post. The second is Section 56 (b) of the Systems Act, which similarly provides that a manager who is directly accountable to a municipal manager must have the relevant skills and expertise to perform the duties associated with the post in question (taking into account the protection or advancement of persons disadvantaged by unfair discrimination). These two provisions scarcely go any way towards providing any meaningful standards, and provide little clue as to what constitutes “relevant skills and expertise.” The third exception does provide a somewhat more concrete standard; this is in the form of the Municipal Regulations on Minimum Competency Levels made in terms of the Local Government: Municipal Finance Management Act.¹⁸⁴ These regulations provide for minimum standards of financial competency for Municipal Managers and financial staff, and whilst already these regulations are in force, they take full effect only in 2013. It is therefore fair to say that apart from these regulations, the field is wide open to the

¹⁸⁴ R 493 Published on 15 June 2007 in Government Gazette 29967.

appointment of any person to a senior position to a municipality.¹⁸⁵ Anecdotal tales of senior managers completely lacking in any relevant qualification being appointed to posts only by reason of nepotism or patronage (or, let it be said, sometimes simply for want of any other candidate) abound; as do tales of office bearers in political parties being appointed to senior positions in municipal administrations.

The position is set to change somewhat. As at the time of writing, an amendment bill¹⁸⁶ to the Systems Act had been approved by the cabinet which in effect provides that municipal managers and managers directly accountable to the municipal managers must have the skills and expertise to perform their duties as *prescribed by regulation*. The bill also provides that “a municipal manager or manager directly accountable to a municipal manager may not hold political office in a political party, whether in a permanent, temporary or acting capacity.” A “political office” is defined as a position of chairperson, deputy chairperson, secretary, deputy secretary or treasurer of the party nationally or in any province, region or other area in which the party operates. This prohibition does not apply to officials who have already been appointed.¹⁸⁷

These proposed changes are of interest to us for a number of reasons. They at least constitute some recognition of the extent of the problem of lack of managerial competency. In fact, the Bill has been widely publicised as a direct response to the crisis

¹⁸⁵ An interest finding of the Auditor-General (2010) contained in the *Consolidated General Report on Local Government Audit Outcomes 2008-09* was that of 247 municipalities analysed countrywide, 204 used consultants to assist with accounting related services; of those 204 municipalities, 127 used consultants, despite the fact that all their critical posts were filled, as a result of lack of technical expertise on the part of officials occupying those posts. This speaks volumes of the skills levels available even in supposedly adequately staffed municipalities. It is also worth noting that 66 of those 204 municipalities used consultants because of vacancies existing in the positions of Chief Financial Officer or other financial positions (See Auditor General 2010, pp 51-54).

¹⁸⁶ The Local Government: Municipal Systems Amendment Bill, published for general comment under GN 394 in Government Gazette 33189 of 14 May 2010.

¹⁸⁷The prohibition on holders of political office being appointed as senior managers has been promoted as being necessary to prevent political interference in the administration of municipalities, and in so doing, to bring municipalities in line with the best practice of civil service neutrality. One is left wondering why, if government were so concerned about promoting civil service neutrality, this new provision applies only to local government, and similar provisions have not been introduced to other spheres of government.

in local government as such, it forms part of Government's "turnaround strategy" for local government.¹⁸⁸ But at the same time, the bill reinforces the tendency noted earlier to interfere with local affairs by means of ministerial regulation, something which has the potential to limit the right of the decentralised unit to appoint whom it wishes to whatever post it chooses. And it also reveals a tendency, which has been noted as being not unusual in states which have undergone processes of decentralisation, for central governments to attempt to claw back the powers which have been devolved to sub-national governments. Whilst it might be quite necessary to ensure that municipalities should be properly managed, the question arises as to whether centrally-exerted control of this nature is compatible with the concept of decentralisation; it is submitted that once again, we have an example of the erosion of the notion of decentralised local government. That said, the fact that interventions of this nature are considered necessary in the first place supports arguments that local attempts at decentralisation are falling short of expectations; it also demonstrates how tensions can arise between the demands of decentralisation and those of efficient administration.

9.6 Performance Management

9.6.1 Framework

A Performance Management System ("PMS") is intended to establish explicit standards and measurements of performance, requiring definitions of goals and targets and the establishment of indicators of success. As such, the idea of a PMS is often associated with New Public Management, but it is also relevant to decentralisation in the context of institutional capacity, which is a key dimension of decentralisation. It will be recalled that the White Paper on Local Government proposed the adoption of performance management principles as a means of making municipalities more developmental. It was argued by writers that performance management in the South African context would be a useful approach and would enhance performance of municipalities, even whilst warning

¹⁸⁸ For more of which, see Chapter 13.

against the pitfalls of designing and implementing Performance Management Systems (Curtis 1999; Atkinson 2001). In the event, section 38 of the Systems Act made it an express requirement that each municipality establish a PMS, promote a culture of performance management, and administer its affairs in an economical, effective efficient and accountable manner. Section 39 emphasises the importance which was placed on the PMS by charging the executive mayor or executive committee with the responsibility of managing the development of the system; section 41 describes the core components of a PMS, whilst section 42 requires the municipality to involve the community in the development of the PMS. Section 43 allows the minister responsible for local government to prescribe key performance indicators that are appropriate and can be applied to local government generally. Section 49 permits the Minister to make a host of regulations regarding performance management, and detailed regulations have indeed been made.¹⁸⁹.

9.6.2 *Practice*

At the outset, there appears to be widespread confusion amongst municipalities as to what constitutes performance management and a performance management system. As we have seen, Section 38 of the Systems Act provides for an institutional PMS. Sections 57 and 67 of the same act refer respectively to performance agreements for senior managers and a human resource system for monitoring, measuring and evaluating performance of staff. Only 3 of our 37 municipalities seemed to be aware of the fact that that Section 38 provided for an institutional PMS, with many of the remainder apparently believing that the provisions of the senior managers' performance agreements constituted a performance management system.

Of the 37 municipalities in the sample, it was found that:

¹⁸⁹ The Local Government: Municipal Planning and Performance Management Regulations, 2001, Published under Government Notice R 796 in Government Gazette 22605 of 24 August 2001. This "top-down" approach" suggests that there may be a conflict between the implementing of objectives which are aimed at promoting both NPM and adherence to principles of decentralisation Something which is frequently warned against in the literature on PMS; see Curtis 1999; Long and Franklin 2004; Martin 2005; Jones 2005)

- only two had performance management systems that were fully compliant with legislation and which were being properly implemented;
- one municipality had recently adopted a new, fully compliant PMS, but had not been able to implement it and did not expect to do so in the foreseeable future, as there was “no-one on the staff to manage it;”
- the remaining municipalities had no PMS at all (apart from the human resource system for monitoring, measuring and evaluating performance of staff, referred to above, which is not what is contemplated in the legislation relating to PMS) (See Appendix B, column (xviii)).

As was so often the case with non-compliance by municipalities with statutory requirements, it was extremely difficult to ascertain the reasons for the failure of municipalities to develop and adopt performance management systems. The most common reason that could be extracted was that municipalities lack the necessary skills to develop and implement performance management systems; another was the equally perennial reason that there were insufficient funds available for purposes of developing such systems.

Considerable importance is placed on performance management systems in the relevant legislation. Amongst other things, such a system is intended to provide a yardstick for managing performance, for setting measurable performance targets, for monitoring performance, for reviewing performance and for improving performance.¹⁹⁰ The designers of the local government framework had clearly placed considerable reliance on the concept of performance management as a means of enhancing delivery by local government. The failure on the part of the vast majority of municipalities in the sample to adopt such systems suggests a widespread indifference to the need for any such system, and places these institutions at risk of becoming goalless and aimless, with no means of determining their effectiveness

¹⁹⁰ See Section 41 of the Systems Act.

9.7 Concluding Remarks.

The capacity crisis in South African municipalities is notorious. It has been suggested that the wholly inadequate capacitation process has resulted in the public sector, in many cases, returning “to its default position...(an) administrative order characterized by lack of transparency, by arrogance, and by a disregard for individual integrity, which, as might be expected, gave rise to a strong degree of general distrust. It is in this context, particularly, that we can understand the tyranny of petty bureaucrats at the local level and their seeming disinterest in effective service delivery” (Tapscott 2008:219).¹⁹¹

There can be little doubt that the demands placed on many municipalities are unrealistic in relation to their administrative capacities. The need to strengthen routine administrative functions is frequently neglected (Tapscott 2008), and it is evident that little attention has been paid, whether at local, provincial or local level, to the strengthening of basic administrative skills and reform of the systems which they support. This situation is exacerbated by what is clearly a widespread failure to apply the statutory provisions described above; this in turn gives rise to several factors which contribute to this lack of capacity: poor recruiting practices, poor discipline, poor or non-existent job definitions, and inadequate knowledge and skills of officials, and ill-designed and poorly implemented administrative systems.

¹⁹¹ A skills audit performed at a small rural municipality in our sample is instructive. The following is a *verbatim* extract from the audit report: “More than 80% of the workforce in this Municipality is unskilled labour; more than 60% of the workforce is over the age of 50 years; more than 75% of the workforce is semi-illiterate; more than 55% of the above mentioned staff report for duty drunk almost every day. There is a big skills gap between the Management and the workers and this is solely due to there being no middle or junior management sections. Here you find a foreman reporting directly to the Head of the Directorate and the Senior Managers are more implementers than strategists of the Institution.” The inclusion of this extract is not intended to suggest that the situation which it describes is typical of all municipalities. It does, however, illustrate the kind of difficulties with which institutions often have to contend.

Chapter 10

Evaluation: Public Participation and Information Mechanisms

10.1 Purpose of Chapter

Public participation and information mechanisms (dimension (viii)) constitute what is widely considered to be a critical feature of decentralisation. The form of participatory democracy which public participation provides is considered to be a vital adjunct to the more formal forms of representative democracy. In this regard, it will be recalled that “working together with local citizens and partners” was considered one of three inter-related approaches which were proposed by in the White Paper on Local Government to assist municipalities to become more developmental.¹⁹²

The Constitution itself is quite explicit about the question of public participation. Section 152(1)(c) states that one of the objects of local government is “to encourage the involvement of communities and community organisations in the matters of local government.” Both the Local Government: Systems Act (“Systems Act”) and the Local Government: Structures Act (“Structures Act”) provide amply for mechanisms, processes and rules designed to promote public participation and disseminate information. Nonetheless, it has been suggested that there is a growing culture of non-accountability within municipalities, with regular complaints about unresponsiveness of officials and councillors, and that channels of communications with mayors and councillors are blocked (Atkinson 2007).¹⁹³

The purpose of this chapter is to evaluate the dimension of public participation in the context of the South African local government framework.

¹⁹² The other two being integrated development planning and performance management.

¹⁹³ The Parliamentary Ad Hoc Committee on Coordinated Oversight and Service Delivery (2010) recognised the lack of visibility and accountability of councillors, and emphasised the importance of regular contact between the council and the populace.

10.2 Framework

Given the importance attached to public participation and communication, it is appropriate to consider the applicable provisions in the framework in some detail. The essential features of the statutory framework are as follows:

(i) Development of culture of community participation: Section 16 of the Systems Act specifically requires a municipality to develop a culture of municipal governance that complements formal representative government with a system of participatory governance. To that end, the municipality must encourage and create conditions for the community to participate in the affairs of the community, contribute to the building of the capacity of the local community to enable it to participate and to the capacity of councillors and staff to foster community participation, and use its resources and allocate funds for these purposes.

(ii) Mechanisms, processes and procedures for community participation: Section 17 provides for a range of channels (such as political structures and councillors) and mechanisms (such as consultative sessions, processing of petitions, public meetings and community report-backs) for public participation. Municipalities are specifically enjoined to take into account the needs of people who cannot read and write people with disabilities, women, and other disadvantaged groups.

(iii) Communication of information: Section 18 requires municipalities to communicate its community information concerning mechanisms for and rights and duties relating to community participation.

(iv) Notice of and admission to council meetings: Section 19 requires the municipal manager of a municipality to give notice to the public of all council meetings; and in

terms of Section 20, meetings of the council and its committees are open to the public (including the media) except in certain circumstances.¹⁹⁴

(v) Communications to local community: Section 21 requires that if anything must be notified by a municipality through the media to the local community, it must be done through the local newspaper or a newspaper circulating in the area or by means of radio broadcasts. Every notice that the municipality is required to publish in the Provincial Gazette must also be placed on municipal notice boards. Provision is made for assistance to illiterate people.

(vi) Documents to be made public: Section 21A requires that all documents that must be made public by a municipality must be conveyed to the local community by displaying them on notice boards, by displaying them on the municipality's website, and by notifying the local community where details of these documents may be obtained.

(vii) Official website: section 21 B provides that a municipality must establish its own website (or if it cannot afford one, it must make the relevant information available for display on an organised local government website). All information required to be made public must be placed on the website and be regularly updated. The municipal manager is expressly required to maintain and regularly update the website. The website is intended to be a rich source of information regarding the affairs of the municipality, and as such, it represents a vital component of the community participation framework.¹⁹⁵

¹⁹⁴ Those circumstances being that it is reasonable to close the meeting, having regard to the nature of the business being transacted, and that such closing is authorised by a by-law or resolution of the council specifying the circumstances in which a meeting may be closed.

¹⁹⁵ Of particular importance are documents which are required to be displayed on the website in terms of Section 75 of the MFMA; these include budgets, budget-related policies, performance agreements, service delivery agreements and several other key documents.

The Structures Act, in turn, makes provision for ward committees. It provides¹⁹⁶ that certain types of municipalities *may* establish ward committees. The object of a ward committee is specifically stated¹⁹⁷ as being to enhance participatory democracy. Ward committees consist of the ward councillor representing the ward in question (who also chair the committee), and not more than ten other persons. Municipalities are required to make rules regulating procedures for the election of members, for the frequency of meetings, and the vacation of office. A municipality may also make administrative arrangements to enable ward committees to perform their functions and exercise their powers effectively, and must develop policies for the payment of out of pocket expenses. A ward committee is empowered to make recommendations on any matter affecting its ward to the ward councillor, or through the ward councillor, to the council, executive committee or executive mayor or relevant metro sub-council.¹⁹⁸ It must be emphasised, therefore, that its function is purely to make recommendations.

10.3 Practice

Inquiries were made at municipalities in the sample in order to determine the extent to which they complied with the requirements regarding public participation and communication. Findings regarding the various requirements are set out below.

Development of Culture of Participatory Governance: At 28 of the municipalities in the sample (information could not be obtained regarding the remaining 9), it was indicated that as required by section 16 of the Systems Act, they were endeavouring to develop a system of participatory government, and that citizens were encouraged to participate in the affairs of the community. In all 28 cases it was reported that funds were allocated in their budgets for promoting community participation. As far as contributing towards the capacity of councillors to foster community participation is concerned, this is generally

¹⁹⁶ In Section 72.

¹⁹⁷ In Section 72(3).

¹⁹⁸ By virtue of Section 74.

interpreted in practice as requiring that councillors receive appropriate training in their roles and responsibilities with particular reference to legislation applicable to local government.

Mechanisms for Public Participation: The requirement that a municipality establish appropriate mechanisms, processes and procedures to enable the local community to participate in the affairs of the community is generally interpreted in practice as, at a minimum, requiring the developing, adopting and implementing of a policy on public participation which provides, amongst other things, for matters such as consultative sessions, notification and public comment procedures, processing of petitions, public meetings and community report-backs.¹⁹⁹ It was ascertained that of the 37 municipalities in the sample, only 11 had any formal mechanism such as a policy for community participation in place (See Appendix B, Column (xix)).²⁰⁰ The 26 municipalities which did not have such a mechanism apparently operated on an *ad hoc* basis, with no policy directive from their councils, except, in one instance, where the council provided occasional resolutions dealing with specific issues.

Communications: Related to the question of community participation is that of communications. Section 18 of the Systems Act requires that a municipality must communicate to its community certain information specified in that section. Although the section does not specifically require any system or mechanism to be put in place to promote communications, the then Department of Provincial and Local Government (now known as the Department of Cooperative Governance and Traditional Affairs) produced guidelines in 2006 for municipal communications which urged municipalities to adopt communications policies.²⁰¹ Again, of the 37 municipalities in the sample, only 11 had purportedly adopted such policies (See Appendix B, Column (xx)).²⁰²

¹⁹⁹ These are all matters specifically mentioned in paragraphs (a) to (e) of Section 17(2).

²⁰⁰ Of those 11, two could not actually locate any policy or other document evidencing the existence of such a mechanism.

²⁰¹ Such policies are required under the guidelines to deal with and provide for issues such as official languages, appropriate language usage, corporate identity, diversity, publications, public environment, consultation and citizen engagement, risk communication, crisis and emergency communication, media

It is worth noting that even though the vast majority of municipalities had no formal mechanisms for community participation and communications, they all purported to practice some or other form of community participation and communications. It is difficult to imagine how it would be possible for any effective participation and communication strategy could be carried out in the absence of such guiding mechanisms.

Council Meetings: There was general compliance amongst the municipalities in the sample with the requirements of Sections 19 and 20 of the Systems Act, with only 4 municipalities indicating that they did not as a matter of course give notice of meetings as required. Of the 37 municipalities, all but two²⁰³ indicated without qualification that they complied with the requirement of permitting the public to attend meetings of the council.²⁰⁴

Whilst compliance with sections 19 and 20 appears to be good on the whole, it is of great concern to note the responses relating to attendance levels by the public. As a rule, statistics of actual attendance by the public at council meetings were not kept by municipalities, so it is not possible to state with any accuracy what actual attendance levels were. Of the 37 municipalities in the sample, 8 indicated that attendance by the public was either “good” or “fair,” whilst the remaining 29 indicated that attendance was either “poor” or “very poor.” One municipality indicated that not a single member of the

relations, events management, advertising and marketing, events management, internal communications and communications cycles.

²⁰² Of those 11, only 6 had also adopted community participation policies.

²⁰³ Of the two exceptions, it was indicated in one case that members of the public were sometimes barred from meetings without justification (but that meetings were in any event not held frequently), whilst in the other it was indicated that members of the public were not actively encouraged to attend for the simple reason that there was simply not enough space to accommodate them in the boardroom which served as a council chamber.

²⁰⁴ Responses regarding meetings of committees of the council were less unequivocal, in most cases, it could not be ascertained whether or not the public had access to committee meetings.

public had attended any one of the 10 council meetings immediately preceding the interview.

Communications to Local Community and Publications of Documents: All 37 municipalities indicated general compliance with these provisions, although a number indicated that illiteracy amongst the public and the inability to publish or broadcast in all languages used in the area limited the effectiveness of these methods. A number also indicated that costs of broadcasting and publication had become prohibitive. All 37 municipalities indicated full compliance with the requirement relating to displaying notices at offices and libraries, but compliance with the provision relating to websites, was, as will be shown below, extremely poor.

Websites: As we have seen, municipalities are required to ensure that certain information as provided for in the Systems Act and the MFMA is displayed on a website. Of the 37 municipalities, 8 did not have websites nor had they made alternative arrangements on a local government website referred to above. On the face of it, this might not seem to be as poor a rate of compliance as one might have feared; yet of the 29 municipalities which indicated that they had websites:

- One indicated that its website had “no content at all”;
- seven indicated that their websites were “dysfunctional”;
- sixteen indicated that their websites were “outdated” or “not updated,”

therefore leaving only five websites compliant with the provisions of the Act (See Appendix B, Column (xxi)).

Reasons given for this state of affairs varied. In a number of cases, lack of funding was indicated; in others, the failure to appoint an official to manage the website was given. Indeed, in only three cases could a municipality identify an individual who had been given that responsibility. In most cases, however, no specific reason could be given for not establishing a functional website and properly managing it.

Ward Committees: The stated object of a ward committee, according to Section 72 (3) of the Structures Act, is to enhance participatory democracy in local government. There is considerable evidence, however, that the ward committees system has not been effective. Attendance by the public at ward committee meetings is poor, and the common perception even amongst those who do attend is that their attendance has no impact. In addition many ward committees remain uncertain about their functions because municipalities have failed to flesh out their functions (Atkinson 2007).

Section 73(3) of the Structures Act provides that a council must make rules regarding the procedure for elections of members to ward committees (taking into account the need for women and a diversity of interests to be represented), the circumstances under which those members must vacate office, and the frequency of meetings of ward committees. Section 73(4) of the Systems Act provides that a council may make administrative arrangements to enable ward committees to perform their functions and exercise their powers. Section 73(5) requires a council to develop a policy and determine criteria for the payment of out of pocket expenses for members. A common practice is for a municipality to provide for all of these matters in ward committee policy.

Of our total sample of 37 municipalities, 3 are district municipalities, and therefore do not have any direct involvement with wards. Of the remaining 34, information on ward committees was not obtained from 12 of them. The sample of municipalities available for purposes of examining ward committees is therefore limited to 22. The findings regarding various aspects of ward committees are set out below.

- *Rules adopted:* Of these 22 municipalities, all had purportedly implemented ward committee systems (See Appendix B, Column (xxii)).²⁰⁵ Of these, however, 10 had not established any rules or formal policy relating to the establishment and operation of ward committees (See Appendix B, Column (xxiii)). Of the 12

²⁰⁵ It should be kept in mind that municipalities are not obliged to implement ward committee systems; in fact, only certain types of municipalities are authorised to establish ward committees, and then these in terms of section 72(1) of the Systems Act *may*, (as opposed to *must*) have ward committees.

municipalities which had adopted policies, it was indicated at 3 of them that there was generally poor implementation, either due to financial constraints or due to lack of staffing capacity.

- *Administrative Support:* Of the 22 municipalities (whether operating under the guidance of a policy or rules or not), 4 indicated that they did not provide any administrative support at all; at a further 3 municipalities, it was not possible to ascertain whether or not any support was provided; whilst at 8 municipalities it was indicated that only “rudimentary” or “poor” administrative support was provided, usually limited to the provision of basic office space. One municipality provided support consisting of office space, telephones and secretarial support. At the remaining 6 municipalities it was indicated that support was provided, but no indication could be obtained as to the level of such support.
- *Out of Pocket expenses:* All municipalities provided out of pocket expenses, although it must be remembered that at least 10 of the 22 municipalities did not have any policy dealing with these expenses.
- *Regular Meetings Held:* 15 of the 22 municipalities indicated that ward committees held regular meetings as and when they were required to, although 6 of the municipalities at which regular meetings were purportedly held did not have rules setting out the frequency with which meetings are to be held, so it is difficult to imagine against what measure “regular” is defined; in not a single case was it possible to produce any minutes of any meetings, and in most cases, it was not known if minutes were even kept.
- *Attendance by Members:* 4 Municipalities could not give an indication of the levels of attendance by committee members of committee meetings. 12 indicated that attendance was “good” or “fair,” whilst the remaining 6 reported poor

attendance by members.²⁰⁶ It is interesting to note, however, that of the 12 municipalities at which good or fair attendance was indicated, at 4 it was suggested that the only reason that any members attended was so that they could collect their out-of-pocket stipends.²⁰⁷

- *Attendance by Public:* At 3 municipalities, no indication could be obtained as to levels of attendance by the public; of the remaining 19, “good” or “fair” attendance was indicated at 8, “poor” attendance was indicated at the other 11.
- *Various issues:* At 12 of the municipalities, the view was expressed that public opinion of the ward system as applied in those municipalities was “poor” or “very poor,” whilst at 7 the view was expressed that public opinion was “good” or “fair.” No views were expressed at the remaining 3 municipalities. All of the municipalities which indicated a poor or very poor public perception also indicated that citizens were frustrated by the fact that proposals emanating from the ward committees seemed inevitably to become blocked at council level and progress no further, with the result that citizens were becoming disillusioned with the system. One official indicated that citizens had a “sense of hopelessness” whilst another reported that its community had “seen it all before” and placed no faith in the ward system.²⁰⁸ Frequent complaints were that the ward systems were under-resourced, and that the areas served by individual ward committees were geographically too large for them to cope with. Dissatisfaction was also expressed with ward councillors, who serve as chairs of the ward committees, in that they did not provide proper leadership to the committees. Finally, concerns were

²⁰⁶ It should be emphasised that in the absence of minutes and formal attendance registers, the levels of attendance reflect somewhat subjective views of the individuals from whom the information was obtained.

²⁰⁷ These anecdotal reports cannot be verified, but if true, they would underline the harsh economic realities which prevail in many municipal areas. Often, some of the few sources of income in unemployment-hit areas are those which accompany election as municipal councillor or ward committee member.

²⁰⁸ An anecdote which was repeated by officials at several different municipalities was that the main reason that the public attended ward council meetings was in the hope of being provided with a meal - how true that is, cannot be said, but if it is true, it is a sad reflection on the levels of poverty which prevail in many areas.

expressed at 9 of the municipalities that the ward committee systems were becoming politicised, with the result that they were being used as platforms for political agendas, which is quite contrary to the intended purpose of ward committees.

10.4 Concluding Remarks

Public participation is widely considered to be both an important objective of decentralisation and a critical element of decentralisation. It will be recalled that “working together with local citizens and partners” – which is what community participation is all about - was considered in the White Paper on Local Government to be one of the approaches which could assist municipalities to become more developmental. On the face of it, South Africa has a comprehensive framework of public participation designed to ensure free communication, responsiveness and accountability, and one which, also on the face of it, is a truly “grassroots” system. Yet the findings of this study suggest that many municipalities have failed to develop and give proper effect to mechanisms for participatory democracy. This being the case, it is perhaps inevitable that participatory systems fail to yield results. This is reflected in the widespread disillusionment with the performance of municipalities and a loss of trust in the institutions of local governance.

The performance of ward committees has been subjected to particular scrutiny. The effectiveness of these committees has been variable with many structures becoming ineffective or dysfunctional (Reddy and Maharaj 2006), and actual participation by the public being poor in many cases.²⁰⁹ Recent research has indicated that ward committees

²⁰⁹ A study by Andrews (2003) suggests that administrative reforms such as NPM and participatory reforms such as those discussed in this section may not complement each other; and this in turn has much to do with the locus of revenue dependence. He states that his findings support the “differential relationship influence support hypothesis” and indicate that higher-level governments have a positive influence over the adoption of administrative procedures only, and that local influence is evident over participation mechanism adoption only. Further, the higher the proportion of revenue collected from local citizens, the higher the level of participation, with higher local revenue dependence leading to greater participatory mechanism adoption; on the other hand, higher dependence on central government for revenue leads to lower participatory mechanism adoption and reform. Andrews argues that these findings indicate that NPM type

were not discharging their developmental mandate by enhancing participatory democracy at local level (Tapscott 2008). Ward committees may have the potential to promote effective public participation, but given their present state of neglect it is difficult to imagine how this potential will be achieved.²¹⁰

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reforms and democratically inspired reforms arise under different influences and are competing reform types.

²¹⁰ Piper and Deacon (2009) believe that it is unlikely that ward committees will help deepen local democracy in South Africa. In a study conducted by them of ward committees in Msunduzi Municipality (which includes Pietermaritzburg) it was found that the functioning of ward committees was overly dependent on the performance of ward councillors, the political will of the local party, and the support of the municipality.

Chapter 11

Evaluation: Jurisdictional Scope and Legislative Authority

11.1 Purpose of Chapter

This chapter deals with dimensions (ix) and (x), namely, jurisdictional scope and legislative authority. The importance of the jurisdictional scope of powers and functions exercised by a local authority was referred to in Chapter 6. It makes little sense to implement a decentralised system and then fail to clothe the decentralised units with meaningful and appropriate powers. Failure to do so would leave a system that is decentralised in name only. By the same token, it is difficult to conceive of any level of government within a decentralised system not having the capacity to make laws. Such a system would likewise be decentralised in name only. The objects of this Chapter, then, are in the first place to examine the extent to which South African local government is granted such powers and functions, and applies them in practice; and in the second place, to examine the extent to which local government has the authority to make by-laws (particularly insofar as by-laws are necessary for the administration of those powers and functions), and the extent to which that authority is used in practice.

11.2 Jurisdictional Scope of Powers and Functions

11.2.1 *Constitutional Authority*

“Jurisdictional scope” is a convenient term to refer to the scope of services, powers and functions which a municipality is authorised to perform. Section 156 of the Constitution deals with the powers and functions of a municipality. Subsection (1) (a) provides that a municipality has executive authority in respect of, and the right to administer the local government matters listed in Part B of Schedule 4,²¹¹ and the local government matters

²¹¹Namely, Air pollution; Building regulations; Child care facilities; Electricity and gas reticulation; Fire-fighting services; Local tourism; Municipal airports; Municipal planning; Municipal health services;

listed in Part B of Schedule 5.²¹² Prior to the enactment of the Constitution, local authorities performed a variety of powers and functions. Those which were performed by a particular municipality depended, amongst other things, on the framework provided by the relevant Provincial Ordinance which applied the municipality's capacity and the racial group which it was supposed to serve (de Visser 2005). The enshrinement of these powers and functions in the constitution provides - in theory, at least - a guarantee of the right of local government to perform specified powers and functions, and is indicative of the importance which was attached to the notion that municipalities should have such rights.

Earlier drafts of the Constitution provided that powers, functions and other features of local government would be determined by national legislation. This would have had the result that although "local government's autonomy was recognised, its powers and functions would be determined by provincial or national statute, rendering it a creature of statute as opposed to a constitutionally protected sphere of government" (de Visser 2005:64-65). In the event, the final constitution granted original powers and functions to municipalities by virtue of Section 156(1)(a). As these powers and functions are allocated directly by the Constitution, municipalities are not dependent on any statutory or executive assignment or delegation for their exercise, although the national government and provincial governments may in terms of section 155(7) regulate the exercise of those powers and functions by municipalities.

The constitutional protection described above has, however, recently been subject to pressure in the form of the Constitution Seventeenth Amendment Bill which was

Municipal public transport; Municipal public works; Pontoons, ferries, jetties, piers, and harbours; Storm water management systems in built-up areas; Trading regulations; Water and sanitation services.

²¹² Namely, Beaches and amusement facilities; Billboards and the display of advertisements in public places; Cemeteries, funeral parlours and crematoria; Cleansing; Control of public nuisances; Control of undertakings that sell liquor to the public; Facilities for the accommodation, care and burial of animals; Fencing and fences; Licensing of dogs; Licensing and control of undertakings that sell food to the public; Local amenities; Local sports facilities; Markets; Municipal Abattoirs; Municipal parks and recreation; Municipal roads; Noise Pollution; Pounds; Public places; Refuse removal, refuse dumps and solid waste disposal; Street trading; Street lighting; Traffic and parking.

published for comment in 2009. The bill, if enacted, would permit other spheres of government to take over the performance of any of the powers and functions of local government referred to in Schedules 4 and 5 of the Constitution. In essence, the bill allows for the passing of national legislation which regulates the executive authority of municipalities in respect of their powers and functions when “it is necessary to achieve regional efficiencies and economies of scale in respect of a specific municipal function.”²¹³ The provisions of the bill enable national government to intervene in local government matters not only in particular circumstances, but also potentially whenever it deems it appropriate. It will be recalled that Section 40 of the Constitution provides that there are to be “distinctive, inter-dependent and inter-related” spheres of government, something which the amendment could render fundamentally meaningless. As such, the bill reveals a weakened commitment to the principles of decentralisation. That said, the initial enthusiasm for the bill which prevailed in certain quarters appears to have receded somewhat, but it remains a reminder of the vulnerability of constitutional protections.

Whilst section 156(1)(a) grants original powers and functions to municipalities, powers and functions may also be allocated to municipalities by way of assignment of powers by legislation,²¹⁴ by way of assignment by executive acts,²¹⁵ by way of delegation of powers and functions²¹⁶ and by way of contracting out matters on an agency basis.²¹⁷

²¹³ Ostensibly, according to the explanatory memorandum on the objects of the Bill, its primary purpose is to facilitate the establishment of the Electricity Distribution Industry (“EDI”) and the establishment of regional electricity distributors (“REDs”). A brief examination of the bill suggests that the explanatory memorandum is disingenuous in the extreme. Not once in the bill itself is the notion of EDI or RED mentioned. Whilst the facilitation of these objectives might well have been promoted by the bill, the scope of the bill is far wider than merely facilitating those objectives. Be that as it may, in December 2010 it was announced on behalf of the cabinet that the concept of regional electricity distributors was to be abandoned; it was not clear at the time of writing, however, what consequences this held for the Constitution Seventeenth Amendment Bill, and whether or not it would be withdrawn.

²¹⁴ Section 156(1)(b) of the Constitution provides for national and provincial legislation to assign additional powers and functions to municipalities; Section 44(1)(a)(iii) of the Constitution empowers the National Assembly to assign additional legislative powers, in addition to their original constitutional powers to make by-laws, to Municipal Councils; and Section 104(1)(c) of the Constitution which empowers provincial legislatures to assign additional legislative powers within the provinces’ competence to Municipal Councils in their respective provinces.

²¹⁵ Section 156(4) of the Constitution provides for the national or a provincial government to assign by agreement and subject to any condition, the administration of any of the matters listed in Part A of Schedule 4 and Part A of Schedule 5 to a municipality; Section 99 of the Constitution authorises a Cabinet

11.2.2 *Scope and Division of Powers*

The choice and arrangement of local government powers and functions has been criticised on grounds that they do not reflect local government's new developmental mandate (de Visser 2005; Christmas and de Visser 2009). In particular, the fact that housing is not a local government power has been questioned as being inconsistent with a developmental approach, as has the absence of clinical health services.²¹⁸ In addition, although it is stated in the White Paper on Local Government that local economic development is a crucial issue for local government, it is not listed as a power or function under the schedules (de Visser 2005), although it must be said that Section 152(1)(b) of the Constitution does refer to the promotion of social and economic development as one of the objectives of local government. It has been argued that additional powers should be granted to local authorities in order for them better to fulfil their developmental mandate (de Visser 2005; Christmas and de Visser 2009). Whilst in theory this may seem attractive, it must be questioned whether, given that many local governments are already overburdened by their existing responsibilities, they are capable of assuming additional responsibilities.

member to assign by agreement any power or function that is to be exercised or performed in terms of an Act of Parliament, to a Municipal Council; and Section 126 of the Constitution authorises an MEC to assign by agreement any power, or function that is to be exercised or performed in terms of an Act of Parliament or a provincial Act, to a Municipal Council.

²¹⁶ Section 238(a) of the Constitution authorises executive organs of state to delegate to municipalities powers or functions that are to be exercised or performed in terms of legislation; and Section 238(b) of the Constitution authorises municipalities to exercise any power or function for any other executive organ of state on a delegation basis.

²¹⁷ Section 238(b) of the Constitution authorises municipalities to exercise any power or function for any other executive organ of state on an agency basis.

²¹⁸ "Municipal Health Services" is included as a municipal function in Schedule 4, but The National Health Act, no. 61 of 2003 (in one of the few cases where a recognisable definition of a power or function is provided) includes matters such as water control monitoring, food control, waste management, health surveillance of premises, prevention of communicable diseases, and the like under "municipal health services", with no mention of clinical health services – something which has now been allocated to provincial authorities.

The Local Government: Structures Act (“Structures Act”)²¹⁹ provides for the division of powers between district and local municipalities, adjustments of such divisions, resolution of disputes concerning the performance of powers, and the like. Of particular note is the fact that Section 84 of the Act imposes on district municipalities the primary task of performing certain specified powers and functions,²²⁰ with the remaining powers being the responsibility of local municipalities. The national government cabinet minister responsible for local government may, however, authorise a local municipality to perform certain of the functions otherwise reserved to district municipalities;²²¹ and the provincial Member of the Executive Council (“MEC”) responsible for Local Government in a particular province may adjust a division of powers by re-allocating them between the local and district municipalities concerned.²²² To this end, the Municipal Demarcation Board (“MDB”) - which we encountered in Chapter 7 - is required to make an assessment of the capacity of the relevant municipality to perform the power or function. Strictly speaking, the MDB is required to make such an assessment only when requested by the MEC to do so. In practice, however, the MDB annually carries out a country-wide assessment of all municipalities and makes such recommendations as it sees fit on the re-allocation of powers.²²³

²¹⁹ Sections 83 to 89 (Chapter 5).

²²⁰ Namely, those specified in section 84 (1) (a) to (p).

²²¹ By virtue of section 84(3) of the Structures Act. These are the powers provided for in Section 84(1) (b), (c), (d) and (I) - respectively, potable water supply systems, bulk supply of electricity, domestic waste water and sewage disposal systems, and municipal health services.

²²² By Virtue of Section 85 of the Structures Act. This authority does not, however, extend to the powers and functions referred to in Sections 84(1) (a), (b), (c), (d) (o) or (p). A “Policy Framework for the Adjustment of Division of Functions and Powers” has been promulgated in the form of regulations (GN 2592 in Government Gazette 21370 of 12 July 2000) which sets out the circumstances in which an MEC may adjust the allocation of powers and specifies the objectives of any such allocation, for example, “the equitable, efficient, affordable, economical and sustainable access to basic municipal services by all consumers;” and “minimising costs of services to consumers and customers.”

²²³ Assessment Reports, compiled district by district, were published annually by the MDB for every annual period until the 2008/09 period; due to a re-evaluation of its assessment process, the MDB, as at the time of writing, had not published a report for the 2009/10 period.

In addition to the powers and functions referred to in Part B of Schedule 4 and Part B of Schedule 5 to the Constitution, municipalities may have powers and functions delegated to them pursuant to legislation or other arrangements. This study, however, focusses only on those powers and functions referred to in the two schedules to the Constitution. The object of the exercise is to ascertain the extent to which the municipalities which are the subject of this study actually fulfill their constitutional mandates.

11.2.3 The Exercise of Powers and Functions in Practice

This subsection examines the extent to which municipalities actually exercise in practice the powers and functions which they are empowered (if not necessarily compelled) by the Constitution to perform.

The relevant parts of the Schedules list a total of 38 powers and functions. 37 of those functions are traditionally assessed by the MDB (the exception being municipal public works) and for the sake of consistency, this study will be confined to the same powers and functions as are assessed by the MDB.²²⁴ In addition, given that powers and functions of district municipalities are somewhat different from those exercised by local municipalities, it should be noted the present inquiry is, for the sake of comparing like with like, confined to those 34 municipalities in this study which are local municipalities.

For present purposes, information on the performance of powers and functions by municipalities was obtained both from the MDB assessment reports for the 2008/09 period and directly from municipalities in the sample.²²⁵ It should be noted that for the

²²⁴ it should be noted that “water and sanitation” are referred to as a single service in Schedule 4 to the Constitution; the MDB consistently treats them as separate services for purposes of its report and that practice is, for the sake of consistency, followed in this study.

²²⁵ In a number of cases, the information contained in the MDB report differs from that gathered directly from municipalities. In such cases, information gathered directly from municipalities was relied on. The MDB report is essentially derived from a “desk-top” analysis of municipalities which is based on data extracted from questionnaires completed by municipalities. The author has noted a tendency amongst many municipalities to insert inaccurate or incomplete data in these questionnaires which are then carried over into the reports, which are therefore sometimes of questionable accuracy.

purposes of this study, a municipality was taken to perform a power or function if it performed it at all; no account was taken of the quality, regularity, or consistency of the performance of the service. It should also be noted that certain municipalities are not authorised (by reason of the allocation of powers and functions discussed earlier) to perform certain functions.²²⁶

The number of powers and functions performed by each of the 34 municipalities is set out in summary below, and is also shown in graph form in Appendix D (Graph 2). Of those 34 municipalities:

- 1 performed 8 powers and functions;
- 2 performed 11 powers and functions
- 2 performed 13 powers and functions
- 2 performed 14 powers and functions
- 1 performed 15 powers and functions
- 2 performed 16 powers and functions
- 1 performed 17 powers and functions
- 4 performed 18 powers and functions
- 4 performed 20 powers and functions
- 2 performed 22 powers and functions
- 1 performed 23 powers and functions
- 1 performed 24 powers and functions
- 2 performed 25 powers and functions

²²⁶ Cases of municipalities not being authorised to perform functions are to be found in the fields of fire-fighting, potable water provision, sanitation and electricity reticulation, where, by reason of intra-provincial reallocations, these powers and functions are in some cases to be performed by district municipalities. Of our sample of 34 local municipalities, however, as best as can be ascertained, 10 are not authorised to perform the fire fighting function; 7 are not authorised to perform the potable water function; 7 are not authorised to perform the sanitation function, and 7 are not authorised to perform the electricity reticulation function. In addition, by virtue of the Structures Act, municipal health functions are supposed to be performed by district municipalities, and not local municipalities, and strictly speaking, therefore, no local municipalities should perform the municipal health function. Nonetheless, as is shown below, a number of local municipalities rather inexplicably reported performing this function.

- 4 performed 26 powers and functions
- 1 performed 27 powers and functions
- 1 performed 28 powers and functions
- 1 performed 31 powers and functions
- 1 performed 32 powers and functions
- 1 performed 33 powers and functions.

In other words, 19 of the 34 municipalities, or 56% of the sample, performed 20 powers and functions or fewer; only 9, or 26% of the sample, performed more than 25 powers and functions.

The extent to which individual powers and functions are performed is indicated below (unless indicated to the contrary in footnotes, all of the 34 local municipalities are authorised to perform each of these powers and functions):

- The air pollution function is performed by 12 municipalities
- Building regulations, by 34 municipalities
- Child care facilities, by 8 municipalities
- Electricity and gas reticulation, by 27 municipalities²²⁷
- Fire-fighting services, by 14 municipalities²²⁸
- Local tourism, by 23 municipalities
- Municipal airports, by 3 municipalities
- Municipal planning, by 34 municipalities
- Municipal health services, by 8 municipalities²²⁹
- Municipal public transport, by 5 municipalities
- Pontoons, ferries, jetties, piers, and harbours, by 1 municipality;
- Storm water management systems in built-up areas, by 31 municipalities

²²⁷ 27 local municipalities in the sample are authorised to perform this function

²²⁸ 24 municipalities in the sample are authorised to perform the function

²²⁹ Strictly speaking, none of the local municipalities in the sample is authorised to perform this function; it is somewhat surprising, therefore, that the MDB assessment report indicates that they do in fact perform it.

- Trading regulations, by 10 municipalities
- Water services, by 27 municipalities²³⁰
- Sanitation services, by 27 municipalities²³¹
- Beaches and amusement facilities, by 5 municipalities
- Billboards and the display of advertisements in public places, by 23 municipalities
- Cemeteries, funeral parlours and crematoria, by 31 municipalities
- Cleansing, by 30 municipalities
- Control of public nuisances, by 16 municipalities
- Control of undertakings that sell liquor to the public, by 6 municipalities
- Facilities for the accommodation, care and burial of animals, by 7 municipalities
- Fencing and fences, by 10 municipalities
- Licensing of dogs, by 6 municipalities
- Licensing and control of undertakings that sell food to the public, by 11 municipalities
- Local amenities, by 25 municipalities
- Local sports facilities, by 33 municipalities
- Markets, by 3 municipalities
- Municipal Abattoirs, by 0 municipalities
- Municipal parks and recreation, by 31 municipalities
- Municipal roads, by 33 municipalities
- Noise Pollution, by 12 municipalities
- Pounds, by 11 municipalities
- Public places, by 21 municipalities
- Refuse removal, refuse dumps and solid waste disposal, by 34 municipalities
- Street trading, by 23 municipalities
- Street lighting, by 23 municipalities
- Traffic and parking, by 25 municipalities.

²³⁰ 27 local municipalities in the sample are authorised to perform this function.

²³¹ 27 local municipalities in the sample are authorised to perform this function.

Functions which are purportedly widely performed by municipalities in the sample include what are considered to be the basic services: potable water supply, sanitation, electricity, and refuse removal.²³² The provision of these basic services has been a preoccupation of national government - perhaps, it sometimes appears, at the expense of other powers and functions. "Basic municipal services" is rather inadequately defined in the Local Government: Systems Act ("Systems Act") as "a service that is necessary to ensure an acceptable and reasonable quality of life, and if not provided, would endanger public health or safety of the environment."²³³ The received interpretation of this definition appears, rightly or wrongly, to encompass the aforementioned four services and little else. Other powers and functions which appear to be widely performed across the spectrum of municipalities include municipal roads, municipal parks and recreation and sports facilities.²³⁴

Whilst the "basic services" are fairly uniformly provided by municipalities (to the extent to which they are authorised to perform them), it is striking that many of the other services are inconsistently performed by municipalities. Of course, geographical and other factors render the performance of certain services inapplicable in certain cases - for example, if municipalities do not have airports or abattoirs or beaches, they of course cannot perform related services. Similarly, very few municipalities have any need to regulate pontoons and ferries. The same cannot, however, be said of powers and functions such as air pollution, child care facilities, public transport, control of public nuisances, animal facilities, fencing, licensing of undertakings that sell food to the public,

²³² It appears that it is only in respect of these powers and functions that any statistics are kept to indicate the level of success achieved. As far as can be ascertained, there is no measure whatsoever or record of levels of achievement of any of the other powers and functions.

²³³ The same definition is found in both the Systems Act and the MFMA. This definition, it is submitted, is so vague as to be almost unworkable. It could just as easily be interpreted to include "air pollution" as "sanitation."

²³⁴ The present author's experience is that whilst municipalities may claim to perform, and notionally do perform, services relating to sports facilities and parks and recreation, those services are often rudimentary in the extreme. For example, the performance of the "local sports facilities" function might involve nothing more than the occasional grading of a dirt football field. Similarly, the state of roads in many municipalities is notoriously poor due to inadequate maintenance.

markets, trading regulations, public places and pounds. These are all issues which require regulation and administration wherever the municipality may be situated, yet many or most of the municipalities in our sample do not perform the associated functions, and it appears that there is little concern or interest, at any level, for exercising those powers and functions. It is true that Section 73(1)(c) of the Systems Act requires that a municipality ensure that “all members of the local community have access to at least the minimum level²³⁵ of basic municipal services,” and that Section 153(b) of the Constitution requires municipalities “to give priority to the basic needs of the community,”²³⁶ but it is difficult to imagine that the drafters of the Constitution or other relevant legislation would have envisaged the wide-scale abandonment of the other powers and functions as being a necessary consequence of these provisions.

The phenomenon of non-performance of powers and functions by municipalities is an issue of particular concern in that if municipalities fail to perform them, then it is highly unlikely that any other level of government will perform them in their stead. The result is that local citizens are left without the benefit of services which might have been expected to be provided as a matter of course in a purportedly developmental society. In this regard, it should be mentioned that Section 155 (6) (b) of the Constitution requires provincial governments to promote the development of local government capacity to perform their functions. The neglect which has been shown in regard to many local powers and functions tends to suggest that provincial governments have in many respects fallen short of their constitutional obligations.

11.2.4 Causes of non-performance

Much has been made of the fact that local government’s powers and functions are expressly protected by the Constitution, and it might have been expected that in a truly decentralised system, these powers and functions would be vigorously performed by the

²³⁶ “Basic needs of the community” is undefined.

sphere of government to which they are allocated. Nevertheless, our sample of municipalities tends to suggest that many local authorities are unwilling or unable to exercise, or are uninterested in exercising, their rights in relation to many of these powers and functions. The question which inevitably arises is why this should be so. During the course of obtaining information from municipalities for the purpose of this study, it was not possible to obtain any particular insight into the reason for this. In most cases, suggested explanations for the low levels of performance of powers and functions were not forthcoming. For the most part, in the few cases in which suggested explanations were forthcoming, they were to the effect that the performance of particular powers and functions was not a municipal priority, or that funds for carrying out functions were lacking. It may, however, be inferred from circumstances that several serious barriers exist to the effective exercising of these powers and functions. Some of the most critical of such barriers are discussed below.

The first relates to concurrent jurisdictional scope over the local government sphere's powers and functions with other spheres of government. Both the national government²³⁷ and the provincial government²³⁸ (in addition to the local authority) have the power to legislate on and administer (through their legislative and executive branches respectively) matters referred to Part B of Schedule 4 to the Constitution, whilst the provincial government has the power (in addition to the local authority) to legislate on and administer the matters referred to in Part B of Schedule 5 to the Constitution.²³⁹ This concurrency must, it is submitted, give rise to considerable confusion as to what precisely municipalities are supposed to do in the exercise of their powers and functions.

A second barrier is to be found in the statutory provisions permitting the switching of powers between local and district municipalities, which were discussed in subsection 11.2.2. They certainly do not lead to stability in the performance of powers and functions

²³⁷ Section 44(1) (a)(ii) read with Section 85 (2)(a) of the Constitution.

²³⁸Section 104(1)(b)(i) of the Constitution read with Section 125 (2) (a) of the Constitution.

²³⁹ Section 104 (1)(b)(ii) read with Section 125 (2) (a) of the Constitution.

and have themselves been the cause of considerable confusion (de Visser 2005; Ramutsindela 2008).

The third barrier is constituted by the fact that the powers and functions are simply not defined at all in the Constitution, and only partly and poorly (and then only in the case of a limited number of powers) in other legislation (such as the Systems Act and occasionally in national legislation dealing with specific powers).²⁴⁰ Poorly defined powers have been a cause of great concern ever since the adoption of the new local government dispensation and it is inevitable that inadequate definition will lead to confusion (Christmas and de Visser 2009).²⁴¹ As a result, municipalities are not provided with clarity as to what is encompassed by a particular power or function. A striking feature common to many municipalities in the sample was the apparent lack of awareness amongst officials, not only of the scope of the powers and functions provided by the Constitution, but also of the extent of the powers and functions which particular municipalities are authorised to perform and do actually perform.

A fourth barrier, which will be discussed in greater detail in the next section, concerns the apparent inability of local authorities to support the exercise of powers and functions with by-laws.

The last barrier is an obvious one: a lack of capacity within local government. The lack of institutional capacity is notorious, and as we have seen in Chapter 9, the failure on the part of many municipalities to implement systems aimed at enhancing capacity exacerbates the situation. This lack of capacity translates into an inability to perform powers and functions which require both general managerial and specialised skills.

²⁴⁰ See also IDASA 2004.

²⁴¹ The Municipal Demarcation Board, in an attempt to address this shortcoming, began a process in 1999 of defining the powers and functions of local government as contained in the schedules, which culminated in 2003 with the publication of a set of definitions, norms and standards of local government powers and functions (Municipal Demarcation Board 2003). Necessary though such an exercise was, the end product has no statutory authority, and in most cases the definitions are obscure and often provide little assistance. The result – so infrequently acknowledged – is that local governments are left with almost no guidance as to what their powers and functions encompass and what constitutes proper exercise and fulfillment thereof.

11.2.5 Concluding Remarks on Jurisdictional Scope

The scope of the powers and functions performed by individual municipalities in our sample varies enormously from case to case, but what clearly emerges is that there is a widespread unwillingness or inability on the part of many of them to perform their constitutionally mandated powers and functions. This state of affairs may be due to any of the various causes discussed above. Given the importance accorded by the Constitution to the performance of such powers and functions, this phenomenon is a matter of serious concern and constitutes one of the most serious challenges to local government.

11.3 Legislative Authority

11.3.1 The Power to Legislate

In the previous section, we saw that a municipality has the executive authority in respect of, and the right to administer, certain specified powers and functions, as provided by Section 156 (1) of the Constitution. Section 156(2) goes on to provide that “a municipality may make and administer by-laws for the effective administration of the matters which it has the right to administer.”

There is some debate in constitutional circles as to whether by-laws made by a municipality are based on delegated powers as opposed to original legislative authority, and whether they have only executive authority over the powers and functions provided by the Constitution (de Visser 2005). It seems clear, however, that the Constitution recognises that the municipal council is the highest legislative and executive authority within a municipality.

The Systems Act²⁴² makes it quite clear that the council of a municipality has the right to govern on its own initiative the local government affairs of the local community, and to exercise the municipality's executive and legislative authority, and to do so without improper interference. The Act goes on to provide²⁴³ that the executive and legislative authority of a municipality is exercised by the council of the municipality. It also provides²⁴⁴ that a municipality exercises its legislative authority by, amongst other things, developing and adopting policies, plans, strategies, and programmes, and implementing applicable national and provincial legislation and by-laws. Whilst the debate regarding the precise scope and extent of a municipality's legislative authority may continue, it is clear that a municipality does have the right to make by-laws for the effective administration of the matters which it has the right to administer. The Systems Act establishes procedures for the passing of by-laws, their publication and the keeping of a municipal code.²⁴⁵ The passing of by-laws is one of the few functions which the council itself must perform, that is to say, it cannot delegate this function to any other body such as a committee.²⁴⁶

Whilst the formal framework caters adequately for the legislative authority of local government, as we shall see below, this is an authority which in practice is often neglected.

11.3.2 Rationalisation and Municipal Codes: Practice

The demarcation of municipalities in the process previously described²⁴⁷ in many cases involved amalgamation or incorporation of areas which previously did not form part of

²⁴² Section 4.

²⁴³ Section 11(1).

²⁴⁴ Section 11(3).

²⁴⁵ Sections 12, 13 and 15 respectively.

²⁴⁶ By virtue of Section 160(2)(a) of the Constitution.

²⁴⁷ See Chapter 7.

any municipality. The Structures Act²⁴⁸ provides that a municipality established in a particular area supersedes the existing municipality or municipalities to the extent that the existing municipality or municipalities fall within that area, and the superseding municipality becomes the successor in law of the existing municipality. The Structures Act goes on to provide²⁴⁹ that if any existing municipality is wholly or partially superseded, the by-laws, regulations and resolutions of that municipality must be reviewed and, where necessary, rationalised by the superseding municipality.

An inquiry made for purposes of this study at each municipality in the sample was whether the municipality had in fact carried out such a review or rationalisation. It was alarming to learn that, some nine years after the Structures Act had come into force, only 4 of the 34 local Municipalities in the sample indicated that such a review had been carried out (See Appendix E (Table 3) Column(i)); in addition, with one exception, no indication could be given as to which, if any, of the by-laws applicable to the superseded municipalities were still in force and to which of the constituent parts of the new municipality they applied. In other words, it was quite possible that different parts of the municipality were regulated by different by-laws, and apparently no-one was any the wiser.

This state of affairs is hardly surprising in the light of the responses to the next inquiry. As we have seen, the Systems Act requires a municipality to compile, maintain and constantly update a municipal code containing all of its by-laws. Apart from the obvious purpose of providing a centralised and accessible compilation of by-laws to the public, it has the very practical function of providing a record for officials of what by-laws are or are not in force. Despite this requirement, inquiries revealed that of the 37 municipalities in the sample (including district municipalities), only 6 had (or at least, the officials of whom the inquiries were made were aware of their having), municipal codes (See Appendix E Column(ii)). In all of the other cases, officials could not state definitively what by-laws had been passed since the superseding process referred to above, let alone

²⁴⁸ Section 14.

²⁴⁹ Section 15

provide any indication at all of which by-laws enacted prior to the superseding process, if any, were still in force.

11.3.3 Legislative Activity in Practice: “Compulsory” By-laws

As far as by-laws enacted after the superseding process are concerned, it is convenient to divide them between those specifically required by statute (i.e. where a statutory provision expressly requires the municipality to adopt a by-law on a particular subject) and those which are not (for example, section 156(2) of the Constitution provides that a municipality *may* make and administer by-laws for the effective administration of the matters which it has the right to administer (namely, the powers and functions discussed in the previous section).

There are three by-laws which (subject to limited exceptions) every municipality is expressly required by statute to adopt:

- Section 75 of the Systems Act provides that a municipal council must adopt by-laws to give effect to the implementation and enforcement of its tariff policy;
- Section 98 of the Systems Act provides that a municipal council must adopt by-laws to give effect to its credit control and debt collection policy, its implementation and enforcement;
- Section 6 of the Rates Act provides that a municipality must adopt by-laws to give effect to the implementation of its rates policy (except in the case of a district municipality which does not have a “district management area”²⁵⁰).

Furthermore, Section 160(6) of the Constitution provides that a municipal council may make by-laws which prescribe rules and orders for its internal arrangements, business and proceedings and other matters. Whilst the provision states that the council *may* make such rules and orders, other statutory provisions (notably Sections 28, 37 and 51 of the

²⁵⁰ District Municipalities do not levy rates unless they have included in their areas of jurisdiction a so-called “district management area” (Rates Act, Section 2). Of the three District Municipalities in our sample, all had district management areas.

Structures Act) make it clear that the existence of such rules and orders is presumed; to all intents and purposes, therefore, a by-law dealing with rules and orders is considered obligatory.

That notwithstanding, of the 37 municipalities which form part of this study, at the time that the relevant inquiry was made at each respective municipality:

- Only 8 had adopted tariffs by-laws;
- Only 13 had adopted credit control and debt collection by-laws;
- Only 7 had adopted rates by-laws;
- Only 10 had adopted by-laws for rules and orders (See Appendix E Columns (iii) to (vi)).

The significance of the failure to adopt tariffs, credit control and rates by-laws will be discussed later.²⁵¹

11.3.4 Legislative Activity in Practice: By-laws Relating to Powers and Functions

Turning now to those by-laws which a municipality *may* adopt as provided for in section 156(2) of the Constitution, we find that a state of neglect prevails in the legislative function of municipalities. As was mentioned above, only six municipalities in our sample had maintained municipal codes and could state with any certainty which by-laws had been adopted by them. Amongst these six, the extent to which powers and functions were supported by the by-laws varied considerably. It must be remembered, of course, that the number of powers and functions purportedly performed varies from municipality, so it is necessary to refer to the by-laws adopted by each municipality in the context of the number of powers and functions performed by each of them. The following was found regarding those six municipalities:

²⁵¹ See Chapter 12.

- One municipality performed 33 powers and functions, of which 24 were supported by corresponding by-laws;
- One municipality performed 18 powers and functions, of which only 5 were supported by corresponding by-laws;
- One municipality performed 20 powers and functions, of which only 6 were supported by corresponding by-laws;
- One municipality performed 26 powers and functions, of which 17 were supported by corresponding by-laws;
- One municipality performed 27 powers and functions, of which only 7 were supported by corresponding by-laws;
- One municipality performed 28 powers and functions, of which 18 were supported by corresponding by-laws.²⁵²

It was obviously more difficult to ascertain the position amongst municipalities which had not maintained municipal codes. The picture which emerges from these municipalities is somewhat alarming. Of the 31 municipalities which did not have municipal codes:

- Only 14 were able to identify any by-laws which had been passed since 1999 (the year in which the Structures Act come into effect). In the absence of municipal codes, however, no indication could be given as to whether the by-laws which were identified represented all of the by-laws of the municipality, or which of them were in force; and no indication could be given at any of these municipalities as to what pre-supersession by-laws, if any, were still in force;
- Officials at 9 municipalities indicated that they believed that the municipality had passed by-laws since 1999, but were unable to locate or specifically identify them or any pre-supersession by-laws;

²⁵² It should be noted that for purposes of computing the number of by-laws that a municipality had adopted, only those by-laws which had undergone the required legislative process of having been passed by the council and having been duly published in the Provincial Gazette were taken into account.

- It was stated unequivocally at 8 municipalities that no by-laws at all had come into force since 1999 (although in a number of cases, a process of developing by-laws had apparently been commenced but for one reason or another had not been completed to the point of their being adopted and published).

11.3.5 Capacity to Make and Administer By-laws

It is difficult to comprehend why there should be such indifference amongst municipalities to by-laws. It is true that the relevant provision in the constitution provides simply that a municipality *may* make by-laws; nonetheless, municipalities do constitute a sphere of government and it is difficult to conceive of such a sphere— much less a *decentralised* sphere – which operates in a legislative vacuum. Some municipalities in our sample had gone some way in the process of developing suites of by-laws intended to match their powers and functions, but then the process had simply come to a halt, with little apart from a collection of partly developed by-laws to show for it. Lack of funds was given as a reason for this in one case; difficulties with the public participation process were given as a reason in another. In other cases, it was stated that by-laws were not a priority of the municipalities concerned, and in yet other cases, it was stated that the municipalities intended to embark on programmes of reviewing and developing by-laws, but had never actually commenced the process. But in most cases, officials were unable to suggest a cogent reason for not adopting a coherent legislative programme. The impression which was gained was that in most cases, municipalities were beset by inertia and were quite indifferent to the consequences which the failure to develop, adopt and implement by-laws held for service delivery. It was also clear that there was little appreciation amongst many officials for the importance and need for by-laws.

Three observations on the issue of by-laws need to be made. First, in cases where municipalities had in fact adopted new by-laws, with one exception, those by-laws were all developed not internally but by outside consultants. This reveals a lack of internal capacity in municipalities, and raises questions about public participation, interest and input in the legislative of process.

The second observation is connected to some extent with the first. Perhaps due in part to the fact that there was little internal involvement in the process of developing by-laws, it was noticeable that there was a lack of familiarity on the part of officials with the contents of by-laws. Even in cases where the administration of by-laws was entrusted to persons who had been appointed as legal managers, it was clear that, with two exceptions, officials were largely unfamiliar with the content, scope and application of the by-laws under their charge.

The third observation is that in many municipalities in the sample, given the lack of institutional capacity, there is little prospect of effective implementation and enforcement of by-laws, even in cases where relatively comprehensive suites of by-laws have been enacted. This is due to the fact that most of the municipalities simply did not have sufficient qualified staff - let alone dedicated law enforcement units - to ensure the observance of by-laws.

11.4 Concluding Remarks

What are the consequences of the state of affairs described above? Municipalities have been endowed with specific powers and functions, but in many cases, these powers and functions are not exercised. But even where powers and functions are exercised, in many cases the effectiveness with which they are exercised is open to question due to the lack of a local legislative framework. As we have seen, section 165(2) of the Constitution contemplates that by-laws may be made by a municipality “for the effective administration of the matters it has the right to administer.” It is reasonable to conclude that the drafters of the Constitution envisaged that such by-laws were necessary for the effective administration of those matters. In addition, the legality of certain acts performed in pursuance of administering those matters could be called into question in the absence of by-laws authorising the performance of those acts. Yet it appears that the legislative function of municipalities has in a number of cases been all but abandoned. A decentralised sphere of government - even the local sphere - cannot exist or operate

effectively in a legal vacuum arising from the absence of a framework of by-laws; and in such circumstances, it becomes almost impossible for a municipality to achieve the objects of local government.

Chapter 12

Evaluation: Fiscal Dimensions

12.1 Purpose of Chapter

Fiscal decentralisation is the process whereby revenues of the central government, and also the power to raise revenues from local sources, are transferred from national to sub-national governments. This chapter focuses on the last two of our dimensions of decentralisation, namely, the authority to raise revenues (dimension (xi)), and revenue sharing (dimension (xii)), which are reflected in the notion of fiscal decentralisation. The objective of this chapter as regards the authority to raise revenue is to ascertain the extent to which provision is made for this function in the local government framework, and also to ascertain the extent to which the relevant systems required to give effect to that framework are actually implemented in practice by municipalities. As far as the revenue sharing dimension is concerned, the objective is again to ascertain the extent to which provision is made for this in the framework, and then to ascertain the extent to which municipalities rely on revenue sharing - or fiscal transfers - to fund their activities.

12.2 Self-financing or Grant-dependent Municipalities?

South African local government is said to be largely self-financing in the sense that the bulk of their resources are raised from own revenue sources such as taxes and service charges (van Ryneveld, 2006; National Treasury 2008; Fiscal and Financial Commission 2010).²⁵³ As we have noted in previous discussions, the principle that a sub-national unit should be significantly self-financing is an important one for any local government system, for a number of reasons. It promotes accountability to local residents for the functions which municipalities perform, and it empowers residents to play a role in expressing their preferences for services and ensuring that municipalities remain

²⁵³ But see the discussion in section 12.4 below.

responsive to their needs (Rodden 2002; Watt 2004; National Treasury 2008). In reality, of course, imbalances between available revenue sources and expenditure needs require that municipalities' own sources of revenue be supplemented by intergovernmental transfers. This is an almost inevitable consequence of fiscal decentralisation and occurs at least to some extent in most decentralised systems. It is not only the availability of resources in relation to spending needs that creates imbalances; the authority, ability and willingness to collect those resources also play important roles. The delegation of taxing authority to collect new taxes to sub-national units that lack the administrative capacity to collect those taxes can set serious constraints on local budgets and increase the dependence of local governments on transfers from central government (Falleti 2005).

In South Africa, notwithstanding the assertion referred to above that municipalities are largely self-financing,²⁵⁴ the capacity of individual municipalities to raise revenues varies enormously, with significant numbers of them being largely dependent on inter-governmental transfers, as will be shown later in this chapter.

12.3 Revenue Raising Authority

12.3.1 Sources of Revenue: Rates, Taxes and User Charges

Local sources of revenue for local governments typically include rates or other taxes, and user charges or tariffs. In South Africa, section 229 of the Constitution permits municipalities to raise revenue from these sources,²⁵⁵ and national legislation in turn has been enacted to give effect to these constitutional provisions, as follows:

²⁵⁴ According to the Minister of Cooperative Governance and Traditional Affairs, the current funding model was based on the assumption that municipalities could garner 95% of their revenue requirements - something which the Minister recognised as being unrealistic (reported in the Cape Times, 26 March, p19).

²⁵⁵ It was estimated that by the 2009/2010 financial year, property rates would constitute 18.9% of municipal operating revenue, country-wide. Other sources of revenue were estimated as follows: service charges – 42.9%; investment revenue – 3.2%; government grants – 22.3%; other own revenue – 12.7% (National Treasury, 2008: 23). Actual budget information for that period suggests that actual proportions will be closer to the following: Rates: 17.1%; service charges: 39.8%; grants: 19.9%; other: 17.4% (Source: Capital and Operating budgets for all municipalities, 2009/10, National Treasury 2009)).

- *Rates:* In order to give effect to the rates provision of the Constitution, the Rates Act was enacted in 2004 and came into effect on 2 July 2005. The act provides for the power of municipalities to levy rates, and provides a detailed framework for the development of rates policies and their review, the enactment of rates by-laws, community participation, exemptions, liability for rates, property valuations, objections, appeals and a host of other matters.²⁵⁶
- *User Charges:* We have already seen that a municipal council has the right to finance the affairs of the municipality by charging fees for services, by virtue of Section 4 of the Systems Act. Section 75A amplifies this right, and sections 74 and 75 require each municipality to adopt a tariffs policy and a by-law to give effect to the tariffs policy.
- *Other Taxes:* Section 229 (2) of the Constitution contemplates the possibility of municipalities raising other taxes, levies and duties; the Municipal Fiscal Powers and Functions Act, no. 12 of 2007, fleshes this provision out, but to date the levying of no additional tax by a municipality has been authorised.

12.3.2 Revenue Raising in Practice

In order for municipalities to perform their functions, it is essential for them to optimise their revenue collection processes. Most municipalities are, however, perceived to be hard-pressed for revenue. As far as local sources of revenue are concerned, this is due to a large extent to the inability or unwillingness on the part of municipalities to collect

²⁵⁶ A crucial provision of the Rates Act as originally enacted is to be found in Section 89, which provided that until a municipality prepares a valuation roll in terms of the Act, it was permitted to continue to use a valuation roll or supplementary valuation roll that was in force in its area prior to the commencement of the Act, and levy rates against such a roll or supplementary roll. That concession was to lapse four years from the date of commencement of the Act – in other words, all municipalities were supposed to have new valuation rolls in place by 1 July 2009. Failure to implement by that date would have meant that a municipality would not be able to impose rates. By that date, 13 municipalities still had not prepared their new valuation rolls. It therefore proved necessary to amend the Rates act so as to extend the concessionary period by a further two years. This episode is related as an example of the consequences of imposing sophisticated systems on institutions which are unprepared for the burdens which accompany them.

revenues.²⁵⁷ As at December 2007, municipalities were owed a total of R 44.2 billion. Metropolitan municipalities were owed the largest portion of this debt, amounting to some R 25.4 billion. That said, the amount owed to local municipalities increased from December 2006 to December 2007 by some R 3 billion, to nearly R 18 billion. This represented some 39% of local municipalities' total budgets at the time (National Treasury 2008). As at June 2009, the total amount owing to municipalities had reportedly grown to R 50,4 billion (SA Local Government Briefing August 2009, p22).²⁵⁸ According to the National Treasury, most municipalities have failed to overcome the challenge posed by outstanding consumer debts; it suggests that this fact highlights possible governance problems in that many municipalities lack the ability to implement credit control policies and pay only lip-service to those policies (National Treasury 2008). This is despite legislation specifically authorising and requiring municipalities to collect such revenues.

The Systems Act and the Rates Act require each municipality to adopt and implement a tariff *policy* on the levying of fees for municipal services (Section 74 of Systems Act), to adopt, maintain and implement a credit control and debt collection *policy* (Section 96 of the Systems Act) and to adopt a *policy* on the levying of rates.

It was found that of the 37 municipalities in our sample:

- 24 municipalities had adopted tariffs policies; 4 had not adopted such policies; and at the remaining 9, no such policy documents could be located and it could therefore not be ascertained whether such a policy had been adopted or not (See Appendix F (Table 4) Column (i));

²⁵⁷ Momoniat (2002) states that “the initial lessons from South Africa indicate that subnational governments require both capacity and the political will to collect revenue due. It is also important when the tax base is small, because of inequity of income, to ensure subnational governments resist the temptation to be selective in the collection of revenue (e.g. by concentration only on those paying their fees or taxes, and ignoring or forgiving those not paying). Subnational governments have not demonstrated significant improvements in collecting all revenue due, or in increasing their potential from current sources.”(p20).

²⁵⁸ It is hardly surprising that municipalities in turn often struggle to pay their own debts. It has been estimated that in 2010 municipalities owed approximately R1,5 Billion for bulk water supplied to them. (Reported in the Cape Times, 16 September 2010).

- 26 municipalities had adopted credit control and debt collection policies; 2 had not adopted such policies; and at the remaining 9, no such policy documents could be located and it could therefore not be ascertained whether such a policy had been adopted or not (See Appendix F, Column (ii));
- 21 municipalities had adopted rates policies; 6 had not adopted such policies; and at the remaining 10, no such policy documents could be located and it could therefore not be ascertained whether such a policy had been adopted or not (See Appendix F, Column (iii)).²⁵⁹

In the light of previous observations regarding compliance with statutory requirements, the level of compliance with the requirements relating to the adoption of these policies is relatively high.²⁶⁰ That is not the end of the matter, however. It will be recalled that in the discussion on legislative authority,²⁶¹ we noted that municipalities were expressly required by various statutory enactments to adopt certain *by-laws*, namely:

- Section 75 of the Systems Act provides that a municipal council must adopt by-laws to give effect to the implementation and enforcement of its tariff policy;
- Section 98 of the Systems Act provides that a municipal council must adopt by-laws to give effect to its credit control and debt collection policy, its implementation and enforcement;
- Section 6 of the Rates Act provides that a municipality must adopt by-laws to give effect to the implementation of its rates policy.

²⁵⁹ 3 of the municipalities in the sample were District Municipalities. Section 2(2)(a) of the Rates Act provides that a district municipality may not levy a rate on a property except on property in a district management area (or “DMA”) within the municipality. A DMA may be declared within a District Municipality in terms of Section 6 of the Structures Act if the establishment of a local municipality in the area is not viable. In such a case, the DMA is administered directly by the District Municipality. Of the three District Municipalities in our sample, all included DMA’s and were therefore entitled to levy rates and by implication were required to have rates policies.

²⁶⁰ One might, however, be surprised at the large number of instances in which policy documents could not be located, as a result of which no definitive answer could be given. The simple fact is that many municipalities do not have any central record of what policies have or have not been adopted.

²⁶¹ See Chapter 11.

It is not clear why the legislature considered it necessary to doubly test the drafting skills of municipalities by requiring both policies and by-laws to be adopted. In any event, provision having been made for them by statute, both policies and by-laws must be adopted in order for a municipality to be able to levy tariffs, practise credit control and debt collection, and levy rates. Whilst, as was noted above, there seems to be a relatively high rate of compliance with the requirements relating to the adoption of policies, compliance with the requirements relating to the adoption of by-laws is extremely poor; of the 37 municipalities in our sample:

- only 8 had adopted tariffs by-laws (See Appendix F, Column (iv)) ;
- only 13 had adopted credit control and debt collection by-laws (See Appendix F, Column (v)) ; and
- only 7 had adopted rates by-laws (See Appendix F, Column (vi)).

This suggests indifference on the part of municipalities to the requirements of the statutory framework within which they are supposed to operate. The consequence of the failure to adopt these by-laws is that a municipality cannot lawfully impose rates and tariffs or perform credit control. Once again, it is difficult to ascertain why precisely this state of affairs exists; the information gleaned from the municipalities does not give cause for optimism:

- regarding tariffs by-laws, of the 29 municipalities which had not adopted them, officials in 19 cases professed not to be aware of the requirement that a municipality adopt such a by-law;
- regarding credit control and debt collection by-laws, of the 24 municipalities which had not adopted them, officials in 17 cases professed not to be aware of the requirement that a municipality adopt such a by-law;
- regarding rates by-laws, of the 30 municipalities which had not adopted them, officials in 16 cases professed not to be aware of the requirement that a municipality adopt such a by-law.

Apart from apparent ignorance of the statutory requirements relating to the adoption of by-laws, no other cogent reason was proffered for failure to adopt them.

12.3.3 Sources of Revenue: Borrowing

We saw in Chapter 6 that borrowing by local governments is considered to be one of the most difficult issues pertaining to local government. In South Africa, the issue is now closely regulated by sections 45 to 51 of the Local Government: Municipal Finance Management Act (“MFMA”).²⁶² In addition, by virtue of the Budget and Reporting Regulations made under the MFMA,²⁶³ municipalities are required to adopt borrowing policies which internally regulate their borrowing processes (previously, under the Regulatory Framework for Municipal Borrowing, it was merely recommended that every municipality adopt a written policy when planning to issue debt). It is important to note that by virtue of the MFMA, a municipality may incur short-term debt (defined as debt repayable over a period not exceeding one year) only to bridge (i) shortfalls within a financial year in expectation of specific and realistic anticipated income to be received in that year, or (ii) capital needs within a financial year, to be repaid from specific funds to be received from enforceable allocations or long-term debt commitments.²⁶⁴ Long-term debt, on the other hand, may be incurred only for the purpose of capital expenditure on property, plant or equipment or for refinancing existing long-term debt.²⁶⁵ It is worth noting that the Constitution was amended in order to allow the passing of the relevant provisions of the MFMA which limit the capacity of a municipality to borrow. Section 230A of the Constitution was inserted in 2001, and contains provisions for the enactment of national legislation relating to the circumstances in which municipalities may borrow funds. It appears that in the absence of such an amendment, national legislation which purported to limit the capacity of a municipality to borrow would have fallen foul of the

²⁶² Which should be read with the Municipal Regulations on Debt Disclosure, published under GN R 492 in Government Gazette 29966 of 15 June 2007.

²⁶³ Published under GN R 393 in Government Gazette 32141 of 17 April 2009.

²⁶⁴ MFMA, Section 45(1).

²⁶⁵ MFMA Section 46(1).

Constitution, as it would have impinged upon the municipality's right to govern the local government affairs of the community.²⁶⁶

12.3.4 Borrowing in Practice

According to projections for the 2009/10, 2010/11 and 2011/12 municipal budget periods, loans constituted respectively 21.4%, 16.4% and 17.4% of combined municipal capital budgets countrywide.²⁶⁷ This reflects, in general terms, both the capacity to borrow and the commitment to spend on capital projects. As far as individual municipalities in our sample are concerned:

- for their 2009/10 budgets, only 14 of municipalities in the sample made any provision at all for loan funding for capital expenditure; in one case 48.5% of the capital budget was accounted for by loans; loans represented 36.3% of the budget in another; in 4 cases, the proportion of the capital budget represented by loans was in the 20% - 30% range; in 4 cases, it was more than 10% but less than 20%; in 4 cases it was less than 10%; and in the remaining 23 cases, no provision had been made for loans at all;
- for their projected budgets for 2010/11, only 8 of the municipalities in the sample made any provision for loan funding of their capital budgets; in two cases, more than 50% of the capital budget was to be funded by loans; in 2 cases, the loan proportion was in the 40% to 50% range; in one case it was in the 30% to 40% range; in two cases it was in the 20% to 30% range; and in one case it was in the 10% to 20% range; in the remaining 29 cases, no provision was made for loans at all;
- for their projected budgets for 2011/12, only five municipalities made any provision for loans; the proportions of loans in relation to the capital budgets for

²⁶⁶ See Chapter 6 for a discussion on global practice relating to the control of sub-national borrowing.

²⁶⁷ Source: National Treasury 2009

those five municipalities were respectively 50.5%, 42%, 33.6%; 21.8% and 13.8%. The remaining 32 municipalities made no provision for loans at all.²⁶⁸

It would be tempting to conclude that the low proportion of loan funding is due to these municipalities being largely able to fund their own capital expenditure; as we will see in the discussion of revenue sharing, such a conclusion would be unduly optimistic.

12.4 Revenue Sharing

12.4.1 Framework

As we have seen, fiscal transfers from national to sub-national governments are a part of fiscally decentralised life. A consequence of fiscal decentralisation is that sub-national governments have lower fiscal autonomy than national government. As a result, the constitutional and statutory framework in South Africa provides for an elaborate set of revenue transfers from national to sub-national governments, which have the primary objective of assisting sub-national governments to provide the services and perform the functions assigned to them under the constitution (Yemek 2005). The broad principle relating to intergovernmental transfers to local government is contained in Section 227 of the Constitution, which provides that local government is entitled to an equitable share of revenue raised nationally to enable it to provide basic services and to perform the functions allocated to it, and may receive other allocations from national government, either conditionally or unconditionally.

Section 214 of the Constitution provides that an Act of Parliament must provide for the equitable division of revenue raised nationally amongst the various spheres of government. The position is accordingly regulated primarily by the Intergovernmental Fiscal Relations Act. Section 9 of the Act requires the Financial and Fiscal

²⁶⁸ Source: National Treasury 2009

Commission²⁶⁹ to submit, in respect of each financial year, to both Houses of Parliament and the provincial legislatures recommendations for that financial year regarding an equitable division of revenue raised nationally among the national, provincial and local spheres of government. It is also required to submit recommendations regarding the determination of each province's equitable share in the provincial share of that revenue, and regarding any other allocations to provinces, local government or municipalities from the national government's share of that revenue, and any conditions on which those allocations should be made.

The Act goes on to provide²⁷⁰ that each year when the Annual Budget is introduced, the Minister of Finance must introduce a Division of Revenue Bill which specifies the share of each sphere of government of the revenue raised nationally for the relevant financial year, each province's share of the provincial share of that revenue, and any other allocations to the provinces, local government or municipalities from the national government's share of that revenue, and any conditions on which those allocations are or must be made. This bill may be submitted only after consultation with the Financial and Fiscal Commission and the various spheres of government. It is in accordance with this bill, once enacted²⁷¹ that fiscal transfers are ultimately implemented to municipalities.

The end result is that nationally raised revenues, less debt repayment liabilities, are divided between the three spheres of government based on their expenditure responsibilities and the other revenue sources available to them.

²⁶⁹ It will be recalled from Chapter 4 that the Financial and Fiscal Commission acts as a consultative body for, and makes recommendations and gives advice to, organs of state in the national, provincial and local spheres of government on financial and fiscal matters.

²⁷⁰ In Section 10.

²⁷¹ Whereupon it becomes the Division of Revenue Act - known colloquially as "DORA."

12.4.2 Vertical and Horizontal Divisions

A distinction must be made between vertical and horizontal divisions of revenue. The vertical division – that is, the division between the various spheres of government – is in practice an outcome of government's deliberations on policy and associated expenditure priorities. It reflects government's view on policy priorities over the medium-term, having regard to the responsibilities, expenditure demands, capacity and performance of each sphere of government. This will inevitably involve trade-offs between functions and spheres of government. The vertical division is not based on a formula; it is largely an allocation based on political judgment (Momoniati 2002). Typically, national and provincial governments have received the greater shares, reflecting their reliance on the vertical division of revenue to secure resources, whereas the local government, in theory, can draw on more sources of own revenue²⁷² – although, as we will be shown later in this chapter, that is often illusory. The local government share has, however, risen at the fastest rate, averaging 21.3 per cent annually since 1995/96, compared to the other spheres of government (National Treasury 2008).

Following the vertical division process, the resources allocated to the local government sphere in general must be divided into transfer programmes and allocated between individual municipalities in a process known as the horizontal division of revenue. The basic distinction between instruments for transferring revenue to individual municipalities is that between conditional and unconditional funding instruments. A conditional transfer is earmarked for specific types of expenditures by municipalities and must be spent in accordance with prescribed processes. An unconditional transfer has no such conditions attached, although it must be spent in accordance with standards and requirements applicable to all public expenditure.

The only type of unconditional transfer in South Africa is the local government equitable share which is a constitutional entitlement, being provided for in section 227(1) (a) of the Constitution. It is the largest single transfer programme, accounting for an average of

²⁷² See for example, Yemek 2005

56.7 per cent of all projected transfers between 2003/04 and 2009/10 (National Treasury 2008), and is intended as the principal “redistribution” tool for fostering government expenditure. The equitable share is intended to fund a range of municipal activities (including the general expenditures of municipalities) and municipalities are largely free to allocate the equitable share as they see fit, after taking account of national priorities that underpin the vertical division of revenue. The formula by which allocations are made has five variable components: basic services,²⁷³ development,²⁷⁴ institutional,²⁷⁵ revenue-raising capacity²⁷⁶ and correction and stabilisation components. Although the Constitution does not prescribe the method for the division of revenue amongst the 283 municipalities, each component does attempt to capture certain basic provisions of the Constitution which must be taken into account for purposes of determining the horizontal division of revenue. The basic services component reflects Section 214(2)(d) of the Constitution, which refers to the need to provide basic services and perform the functions allocated to them; the development component reflects Section 214(2) (f) of the Constitution, which refers to the developmental and other needs of provinces, local government and municipalities; the institutional and revenue raising components reflect section 214(2)(e) of the Constitution, which refers to the fiscal capacity and efficiency of provinces and municipalities; and the correction component reflects Section 214(2)(i), which refers to stable and predictable allocations of revenue shares (Financial and Fiscal Commission 2010).²⁷⁷

²⁷³ Subsidies are provided to support five services (water, sanitation, electricity, refuse and environmental health) in the basic services formula.

²⁷⁴ The development component is currently inactive due to a lack of consensus on the funding role of this component (Financial and Fiscal Commission 2010).

²⁷⁵ The institutional component consists of a general subsidy to support administrative and institutional costs.

²⁷⁶ The revenue raising component attempts to correct equitable share allocations by considering the revenue potential and fiscal capacity of municipalities.

²⁷⁷ The Financial and Fiscal Commission is, however, critical of the formula used for determining the equitable share. It suggests that the current cost or subsidy estimates used in the formula have no theoretical or empirical basis that efficiently reflects the expenditure pressures that municipalities face. The Commission also refers to several features of the current formula that make it difficult to estimate and fund fiscal gaps accurately. These include the lack of an accurate costing framework that defines the different expenditure needs of municipalities; inefficient calculation, application and the diminishing of influence of the revenue raising component; the lack of transparency in the stabilisation component; inefficiencies

Conditional transfers make up the remainder of the resources transferred by national government to municipalities. These transfers are provided to support municipal infrastructure investment and to strengthen municipal capacity. In both cases, transfers are made directly, in the form of cash, and indirectly, in the form of assets or support services provided to a municipality. The largest infrastructure transfer programme is the municipal infrastructure grant. It accounts for a projected average of 54.1% of all infrastructure transfers between 2003/04 and 2009/10. Other direct transfers account for an average of 24.8 % of all infrastructure transfers between 2003/04 and 2009/10. Indirect transfers and capacity building transfers account for the balance (National Treasury 2008).

12.4.3 Transfers in Practice

It has often been stated that local government is substantially financed by its own revenues.²⁷⁸ This may be true of local government in general, but this contention obscures that fact that vast differences exist in the capacities of individual municipalities to finance their expenditure from their respective revenue sources. For the 2009/10 financial year, 72.8% of all municipal revenue (both capital and operating) countrywide was budgeted to be derived from municipalities' own sources,²⁷⁹ with the remaining 27.2% of funding being derived from grants in one form or another. If, however, metropolitan municipalities are disaggregated from other municipalities, then we find that for 2009/10, only 16.3% of metropolitan revenue is derived from grant funding, whilst a substantial 40.2% of funding for other municipalities - that is, local and district municipalities- is derived from grant funding.²⁸⁰ If the so-called "secondary cities" (those being the local

associated with using outdated census data; and difficulties associated with identifying an appropriate and socially reflective indicator for poverty (Financial and Fiscal Commission 2010).

²⁷⁸ See, for example, van Ryneveld, 2006; and Fiscal and Financial Commission 2010.

²⁷⁹ Source: Capital and Operating budgets for all municipalities, 2009/10; 2010/11; 2011/12 (National Treasury 2009).

²⁸⁰ The levels of grant funding for local and district municipalities for 2010/11 and 2011/12 are projected at 42.3% and 40.6% respectively .

municipalities with the largest budgets)²⁸¹ are further disaggregated from the greater body of local and district municipalities, then grant funding accounts for 50.3% of the combined budgeted revenue of the remaining local and district municipalities.²⁸² As far as the relative shares of grant funding are concerned, metropolitan municipalities, which accounted for 54.3% of total budgeted countrywide municipal revenue, absorbed only 32.6% of grant funding in 2009/10, whilst other municipalities accounted for only 45.7% of revenue, yet absorbed 67.4% of grant funding.²⁸³

Turning to the 37 individual municipalities which make up our sample, an examination of their budgets for the 2009/10 financial year reveals that grants represented:

- Less than 20% of budgeted revenue in 5 cases;
- 20% or more of revenue but less than 30% in 4 cases;
- 30% or more of revenue but less than 40% in 8 cases;
- 40% or more of revenue but less than 50% in 4 cases;
- 50% or more of revenue but less than 60% in 4 cases;
- 60% or more of revenue but less than 70% in 4 cases;
- 70% or more of revenue but less than 80% in 3 cases; and
- 80% or more of revenue in 5 cases, with the highest being 86.9%.²⁸⁴

In other words, 16 (or 43%) of the municipalities in our sample relied on grants for 50% or more of their revenue; 20 (or 54%) (including those 16) of them relied on grants for 40% or more of their revenue (See Appendix G (Graph 3)).

Projections for the 2010/11 financial year indicate that grants represent:

²⁸¹ These are classified as “B1” municipalities under the Municipal Infrastructure Framework (see Chapter 5).

²⁸² Source: Capital and Operating budgets for all municipalities, 2009/10 (National Treasury 2009).

²⁸³ Source: Capital and Operating budgets for all municipalities, 2009/10; 2010/11; 2011/12 (National Treasury 2009).

²⁸⁴ Source: Capital and Operating budgets for all municipalities, 2009/10 (National Treasury 2009).

- Less than 20% of budgeted expenditure in 4 cases;
- 20% or more of revenue but less than 30% in 6 cases;
- 30% or more of revenue but less than 40% in 6 cases;
- 40% or more of revenue but less than 50% in 5 cases;
- 50% or more of revenue but less than 60% in 5 cases;
- 60% or more of revenue but less than 70% in 4 cases;
- 70% or more of revenue but less than 80% in 3 cases; and
- 80% or more of revenue in 4 cases, with one municipality relying on grants to the extent of 100% of its revenue.²⁸⁵

Again, 16 (or 43%) of municipalities in the sample rely on grants for 50% or more of their revenue in 2010/11; 21 (or 57%) (including those 16) of them rely on grants for 40% or more of their revenue. For the first time we notice that a municipality is entirely dependent on grant funding (See Appendix H (Graph 4)).

Finally, projections for the 2011/12 financial year indicate that grants represent:

- Less than 20% of budgeted expenditure in 3 cases;
- 20% or more of revenue but less than 30% in 5 cases;
- 30% or more of revenue but less than 40% in 7 cases;
- 40% or more of revenue but less than 50% in 7 cases;
- 50% or more of revenue but less than 60% in 2 cases;
- 60% or more of revenue but less than 70% in 5 cases;
- 70% or more of revenue but less than 80% in 2 cases; and
- 80% or more of revenue in 6 cases, with one municipality again relying on grants to the extent of 100% of its revenue.²⁸⁶

²⁸⁵ Source: Capital and Operating budgets for all municipalities, 2010/11 (National Treasury 2009).

²⁸⁶ Source: Capital and Operating budgets for all municipalities, 2011/12 (National Treasury 2009).

Thus in 2011/12, 15 (or 41%) of the municipalities in our sample relied on grants for 50% or more of their revenue; 22 or 59% (including those 14) of them relied on grants for 40% or more of their revenue (See Appendix I (Graph 5)).²⁸⁷

12.5 Management of Revenues and Expenditure

In the preceding sections, sources of municipal revenue and the issues associated therewith were discussed. In the present section, the ability of municipalities to manage those revenues will be considered. Financial management is an issue which is as appropriately discussed under the dimension of institutional capacity as it is here, because, it is submitted, effective management is dependent upon the existence of the necessary skills within the institutions concerned. For the sake of thematic consistency, however, it is dealt with in this chapter.

Of all the challenges facing local government in South Africa, the widespread inability to manage finances is perhaps one of the most notorious. One of the most commonly cited - and obvious - reasons for this inability is the lack of capacity. The General Report of the Auditor-General on Audit Outcomes of South African Local Government for the Financial year 2007-08 ("Auditor-General 2009") identified a general lack of capacity and skills (attributable to ineffectiveness of recruitment, training and supervision of financial personnel) to enable compliance with the prescribed accounting framework as a principal contributing factor to the high incidence of audit qualifications in most provinces.²⁸⁸ Other challenges identified by the Auditor-General include ineffective performance management systems, inadequate governance structures,²⁸⁹ lack of

²⁸⁷ To the best of the author's knowledge, no norm for or ideal level of grant funding has been established by the National Treasury or any other authority, and there is therefore no means of assessing the desirability of the level of grant funding applicable to any particular municipality.

²⁸⁸ See Auditor-General 2009:26-30. The inability to attract staff and high staff turnover were identified as specific underlying causes of lack of capacity.

²⁸⁹ For example, it was found that in the Free State Province during the 2007/08 financial year, close to 90% of municipal audit committees and 84% of internal audit units did not substantially fulfil their legislated responsibilities.

leadership involvement, the failure to prioritise and address issues, and non-adherence to established controls (Auditor-General 2009:26-30).²⁹⁰ Whilst these reasons are varied, they are, it is submitted, ultimately traceable to inadequate institutional capacity.

Further causes identified in the Consolidated Report of the Auditor-General on the Local Government Audit Outcomes 2008-09 (“Auditor-General 2010”) included a lack of participation by municipal leadership in the accounting and auditing process and a lack of accountability for a prior year’s negative results by incoming leaders. Governance issues are also a cause for concern. A common issue, according to the Auditor-General, is that audit committees fail to fulfil their responsibility to identify and mitigate risks, and fail to assume adequate responsibility to review financial statements submitted for audit; they also fail to play a proper role in the reviewing of performance. Internal audit units are also subject to criticism by the Auditor-General: for example, they are reported to fail to take responsibility for governance and risk identification, are not always empowered to influence management through recommendation, and they do not assist municipal leadership by providing independent assurance on implementation plans intended to deal with audit issues (Auditor-General 2010:24-25).

These weaknesses are exacerbated by poor financial practices, some of them alarmingly basic. These include a lack of financial discipline in basic internal controls over financial management, such as authorisations, reconciliations and review of accounts; a lack of supporting documents; failure to produce proper monthly financial statements; lack of processes to identify and prevent unauthorised, fruitless and wasteful and irregular expenditure; lack of ongoing monitoring of activities through the year (such as performance of basic internal controls); and, alarmingly, the lack of understanding of accepted accounting practices by Chief Financial Officers and financial staff (Auditor-General 2010).

²⁹⁰ It is particularly interesting, for purposes of the present study, that the Auditor-General found that for the 2007/08 financial year, instances of material non-compliance with relevant legislation not affecting the financial statements were found in 77% of municipalities. Non-compliance related mostly to the MFMA (for example, failure to comply with the budget process, failure to pay creditors in time, and a lack of fraud prevention plans). Instances of non-compliance with other legislation, such as the Systems Act, were also found - for example, failure on the part of councillors and managers to declare interests, and failure to implement performance management systems (Auditor -General 2009:36).

The weaknesses in the financial management of municipalities are manifested in the audit opinions expressed by the Auditor-General on municipalities countrywide, as indicated below:

- for the 2006/07 financial year, the Auditor-General's audit opinions on the 239 municipalities which were reported on were as follows: 99 received disclaimers;²⁹¹ 19 received adverse opinions;²⁹² 69 received qualified opinions;²⁹³ 51 received financially unqualified (with other matters)²⁹⁴ opinions; and only 1 received a financially unqualified (with no other matters) opinion (Source: Auditor General 2009:25);
- for the 2007/08 financial year, the Auditor-General's audit opinions on the 278 municipalities which were reported on were as follows: 110 received disclaimers; 11 received adverse opinions; 63 received qualified opinions; 91 received financially unqualified (with other matters) opinions; and only 4 received financially unqualified (with no other matters) opinions (Source: Auditor General 2010:13);

²⁹¹ A disclaimer of opinion is expressed when the possible effect of a limitation on scope is so material and pervasive that the auditor has not been able to obtain sufficient appropriate audit evidence to form an opinion and accordingly is unable to express an opinion on the financial statements.

²⁹² An adverse opinion is expressed when the effect of a disagreement with management regarding departures from the financial reporting framework/basis of accounting is so material and pervasive to the financial statements that the auditor concludes that a qualification of the report is not adequate to disclose the misleading or incomplete nature of the financial statements.

²⁹³ A qualified opinion is expressed when the auditor concludes that an unqualified opinion cannot be expressed due to the effect of any disagreement with management regarding departures from the applicable financial reporting framework/basis of accounting which result in material misstatement of the financial statements or due to the limitation on scope being not so material and pervasive as to require an adverse opinion or a disclaimer of opinion.

²⁹⁴ An auditor's report may be modified by adding an emphasis of matter paragraph(s) to highlight a matter affecting the financial statements which is included in a note to the financial statements that more extensively discusses the matter. The addition of such an emphasis of matter paragraph(s) does not affect the auditor's opinion on whether the financial statements are fairly presented. The auditor may also modify the auditor's report by using an emphasis of matter paragraph(s) to report matters other than those affecting the financial statements, such as material inconsistency of other information included in the annual report.

- for the 2008/09 financial year, the Auditor-General's audit opinions on the 247 municipalities which were reported on were as follows: 81 received disclaimers; 8 received adverse opinions; 47 received qualified opinions; 107 received financially unqualified (with other matters) opinions; and only 4 financially unqualified (with no other matters) opinions (Source: Auditor General 2010:13).²⁹⁵

Our sample of 37 municipalities is fairly representative of the problem. The Auditor - General found that for the 2006/7 financial year, of our 37 municipalities:

- 21 received disclaimers
- 2 received adverse opinions;
- 11 received qualified opinions;
- 1 was financially unqualified (with other matters);
- none was financially unqualified (with no other matters).

Due to late submission of the financial statements, the remaining two municipalities were not audited in time for their findings to be contained in the report (See Appendix J (Table 5)).

For the 2007/8 financial year the situation had improved somewhat: of our 37 municipalities:

- 12 received disclaimers;
- 1 received an adverse opinions;
- 11 received qualified opinions;
- 5 were financially unqualified (with other matters);

²⁹⁵ The discrepancies between the numbers of municipalities reported on in each year is due to the fact that varying numbers of municipalities failed to submitted their financial statements in time for them to be audited and included in the Auditor-General's Report. This makes comparisons on a year-to-year basis somewhat difficult.

- none was financially unqualified (with no other matters).

The remaining eight were not audited in time for their findings to be contained in the report, due to late submission of the financial statements (See Appendix J).²⁹⁶

Another interesting measure of financial management capacity is to be found in the evaluation of “good management” practices. As part of the audit process, the Auditor-General measured five basic good management practice indicators which reveal as much about the administrative capacity of municipalities as they do about their finances. In summary, for the 2007/8 financial year, of the 37 municipalities in our sample:

- only 6 complied with the practice of providing a “clear trail of supporting documentation that is easily available and provided in time;”
- only 7 complied with the practice of ensuring “quality of financial statements and management information;”
- only 17 complied with the practice of timely submission of financial statements and management information;
- only 10 complied with the practice of ensuring availability of key officials during audits;
- only 3 complied with the practice of developing of and complying with risk management and good internal control governance practices;
- only 9 complied with the practice of providing leadership, supervision and monitoring (See Appendix K (Table 6)).²⁹⁷

The audit process also examines matters that do not have a direct impact on the audit opinion, but which clearly reflect the consequences of weak financial management. Here we are concerned with issues such as material losses, unauthorised expenditure, fruitless

²⁹⁶ General reports on audit outcomes of local government for the various provinces - in which audit opinions of individual municipalities would be indicated - were not available for all provinces for the 2008/09 financial year at the time of writing, hence it is not possible to provide a comparison of audit opinions of the municipalities in our sample for that financial year.

²⁹⁷ Source: Auditor-General 2009.

and wasteful expenditure, irregular expenditure and under-spending. Information on our individual sample municipalities was not available at the time of writing, but the following data relating to the position country-wide is illuminating:

- For the 2008-09 financial year, it was found that municipalities and municipal entities across the country²⁹⁸ incurred more than R5 billion in material losses (i.e. above average losses resulting mainly from the distribution of water and electricity, which in turn translate into a loss of revenue for municipalities) (Auditor-General 2010:41);
- For the 2008-09 financial year, across the country,²⁹⁹ unauthorised expenditure by municipalities and municipal entities amounted to more than R 2,4 billion (Auditor-General 2010:41) Unauthorised expenditure includes over-expenditure on municipal budgets,³⁰⁰ overspending on a particular vote, expenditure on a department from an unrelated vote, expenditure for a purpose other than specified, spending of an allocation other than in accordance with the conditions attaching to the allocation, and the making of a grant by a municipality other than in accordance with the MFMA;
- It was found that across the country, more than R117million had been incurred by municipalities and municipal entities on fruitless and wasteful expenditure (i.e. expenditure that has been incurred in vain and would have been avoided had reasonable care been exercised). This was due mainly to interest accrued as a result of late payment to creditors, rentals for unoccupied buildings and cancellation of irregular contracts (Auditor-General 2010:42).

²⁹⁸ Excluding the province of Limpopo; the reason for its exclusion is not stated in the Auditor General's report.

²⁹⁹ Excluding the province of Mpumalanga; again the reason for its exclusion is not stated in the Auditor-General's report.

³⁰⁰ The preparation of credible, coherent budgets has in itself been a challenge for many a municipality. In an attempt to introduce uniformity in budget preparation and presentation, the Minister of Finance promulgated the Municipal Budget and Reporting Regulations under GN 393 of 2009, published in Government Gazette no. 32141 of 17 April 2009. The regulations are themselves complex, and it is to be wondered to what extent many municipalities have the capacity to apply them. Information on the extent of budget credibility following the introduction of the regulations was not available at the time of writing.

- Country-wide, irregular expenditure (i.e. expenditure incurred in contravention of certain statutes, namely the MFMA, the Systems Act or the Public Office Bearer's Act, 1998, or in contravention of a requirement of a municipality's supply chain management policy) by municipalities and municipal entities amounted to more than R 2,3 billion for 2008-09. This was due mostly to non-compliance with supply chain management requirements (Auditor-General 2010: 42).
- It was found that in five provinces³⁰¹ underspending on budgets amounted to R1,5 billion. A further R1,6 billion was under-spent on government grants (Auditor-General 2010:42).

In addition to the lack of capacity and its inevitable consequences for sound financial administration, there is the ongoing threat of corruption. According to Atkinson, "local government corruption sometimes appears to be so corrupt as to be endemic. The politics of patronage and nepotism continues to blight municipal politics" (2007:67). Atkinson suggests that corruption appears to take place on the basis of individual acquisition, or with the cooperation of small and informal friendship groups, and that local party branches are prone to capture by small informal networks, which in turn capture key positions in municipalities. Corruption at municipal level may take many forms, such as the misuse of mayoral funds, irregular performance bonuses, abuse of council property for private or party ends (Koelble and Li Puma 2008), and irregular staff appointments.

Perhaps the most obvious vehicle for corrupt activities is, however, the procurement process. As we have seen, irregular expenditure accounted for R 2, 3 billion in 2008-09; according to the Auditor-General, the bulk of that is attributable to non-compliance with supply chain management procedures. It is a matter of speculation as to what proportion may in turn be attributed to corrupt practices, but the potential for such practices in the context of procurement is clearly enormous. This is despite the provisions of the MFMA, which are intended to insulate the supply chain management process from political interference and provide checks against corrupt practices. Regulations made under the

³⁰¹ The reasons for the exclusion of the other provinces is not stated in the Auditor-General's report.

MFMA provide the basis for a standardised supply chain management policy applicable to all municipalities. Despite the good intentions of the regulations, they have created an enormously complex process which requires considerable institutional capacity in order to apply properly. Many municipalities simply lack that capacity, with the result that the process may be quite easily manipulated and subjected to venal influences. Methods employed to circumvent the process which have been described to the author include “cover quoting,” whereby connected entities submit tenders whilst purporting to be in competition, “tender splitting,” whereby tenders are split into component parts which individually fall below cost levels which at which competitive bid processes must be applied, thereby enabling favoured bidders to avoid being subjected to those bid processes, and inviting tenders for services that are not required. Even more blatant activities include paying contractors against false invoices or false certificates of completion, or for work not done at all, influencing bid committees to award contracts to favoured contractors, awarding contracts to “ghost” companies or awarding contracts without their being subjected in any way to the supply chain management process.

12.5 Concluding Remarks

Fiscal transfers to local government have continued to grow strongly in real terms since 2003/4 (National Treasury 2008). It has been asserted that this phenomenon has “allowed the major transfer programmes to contribute significantly to the fight against poverty” and that “a new generation of programmes is beginning to help municipalities meet the challenges of economic growth at the local level, through encouraging infrastructure investment” (National Treasury 2008:52). It is submitted that this assertion avoids a number of serious concerns which arise from the state of affairs described in this Chapter.

Four concerns in particular come to mind. The first relates to the question of compliance. A comprehensive statutory framework has been put in place to permit and regulate the collection of revenue from local sources, yet many municipalities have failed to comply with that framework. This not only limits the ability of municipalities to raise their own revenue, but also suggests indifference on the part of many of them to the need for

compliance in general. The second concern relates to the issue of sustainability. When municipalities rely on grants for such substantial proportions of their incomes as do many of the municipalities in our sample (as much as 100% in one case), then the sustainability of these municipalities must be questioned, even if they do comply with statutory requirements relating to the raising of local revenue. The third area of concern is the effect of grant dependency on accountability of municipalities towards citizens. Grant dependency poses a significant threat to accountability, for reasons previously discussed.³⁰² As far as the author is aware, there is no benchmark against which to determine at which level grant funding poses a threat to accountability, but intuition suggests that the situation which prevails amongst the municipalities in our sample - in which a large number of those municipalities depend on grants for a significant proportion of their revenues - cannot promote accountability and has the potential for undermining the entire basis for a decentralised system of governance. The final area of concern is the ability of municipalities to manage finances. Even assuming that municipalities have sound revenue bases, the lack of institutional capacity - combined with corruption and a lack of accountability - constitutes a constant threat to proper financial governance, as is so clearly reflected in the findings of the Auditor-General.

³⁰² See Chapter 6.

Chapter 13

Government's Response to the Crisis in Local Government

13.1 Purpose of Chapter

In Chapter 1, reference was made to a number of failures of local government. These failures and their causes had in many instances been apparent for a considerable length of time. Whilst the national government was evidently not unaware of the difficulties with which local government was presented,³⁰³ it appears that it was not fully seized of the extent of the crisis facing local government until approximately 2009.³⁰⁴ This awakening may have been prompted to some extent by the wave of “service delivery protests” referred to in Chapter 1 which first become manifest in 2004, escalated rapidly in 2007 and 2008 and were continuing almost unabated at the time of writing.

The purpose of this Chapter is to review government's current response to the crisis, and to consider the role of decentralisation in that response.

³⁰³ For several years, government's principal response to the growing difficulties facing local government was the introduction of a number of capacity building projects (driven not only by national and provincial governments, but also parastatal organisations, private organisations and international donor organisations) aimed at improving the capacity of local government to deliver services. Some fifteen of these projects have been established since 1996, and several of them were still in operation at the time of writing. The effectiveness of these projects is difficult to measure, and to the best of the present author's knowledge, no assessment of their impact has been undertaken. See Financial and Fiscal Commission 2009 for a more detailed discussion of these programmes.

³⁰⁴ The Deputy Minister for Cooperative Governance and Traditional Affairs acknowledged in a speech delivered on 20 August 2009 that local government “just ain't working” and that the government had overestimated the political depth, governance experience and technical capacity available at municipal level (Reported in the Weekender, 22-23 August 2009).

13.2 Government's Response

13.2.1 Preliminary Work: An Assessment of Local Government

Government's response in 2009 took the form of a national "Local Government Turnaround Strategy" which was to be based on the findings of individual assessments of the state of governance and service delivery of all municipalities. The assessments were conducted by provincial task teams, which were instructed to "engage with all the key stakeholders at municipal level, e.g. caucus/councils, senior management, Traditional Leaders, opposition parties and Communities if possible."³⁰⁵ The objective was to "investigate the underlying causes of the challenges and weaknesses of governance and service delivery, in terms of the institutional capacity and capability, financial challenges and the political environment" and "develop a support plan that identifies immediate medium and long-term actions, and the required support measures from national and provincial government, partners outside of government and other key players."³⁰⁶

13.2.2 "Reasons for Distress"

The assessment reports formed the basis for an Overview Report on the state of local government in South Africa.³⁰⁷ The Report concluded that the underlying "reasons for distress in municipal governance" were due to a number of factors. Tensions between the political and administrative interface were identified as being one such factor. Another was the poor ability of many councillors to deal with the demands of local government. Furthermore, it was maintained that there was insufficient separation of powers between

³⁰⁵ This instruction was conveyed from national to provincial governments in a letter from the Minister for Cooperative Governance and Traditional Affairs to Provincial Members of the Executive Committee responsible for local government, dated 7 July 2009.

³⁰⁶ As contained in the abovementioned letter.

³⁰⁷ "State of Local Government in South Africa - Overview Report on the National State of Local Government Assessments": Department of Cooperative Governance and Traditional Affairs (2009(a)).

political parties and municipal councils.³⁰⁸ The lack of clear separation between the legislative and the executive functions was identified as a further cause.³⁰⁹ Yet another cause was inadequate accountability measures and support systems and resources for local democracy. Finally, poor compliance with the legislative and regulatory frameworks for municipalities was blamed (Department of Cooperative Government and Traditional Affairs 2009(a)).³¹⁰

The report suggested that party political factionalism and polarisation of interests and the creation of political alliances and elites had contributed to the progressive deterioration of municipal functionality, and that factionalism has emerged on a scale that in some areas, “is akin to a battle over access to state resources rather than any ideological or policy differences,” and the situation has arisen where “there is now a lack of citizen trust and confidence in the system”(Department of Cooperative Government and Traditional Affairs 2009(a):10-11).

³⁰⁸ It is not clear whether this statement was intended to suggest that political parties had, in an unconstitutional fashion, usurped the powers of municipal councils.

³⁰⁹ No indication is, however, given as to how such “lack of separation” leads to municipal distress.

³¹⁰ It is curious that “poor compliance with the legislative and regulatory frameworks for municipalities” is stated as one of the “causal reasons for distress in municipalities.” The Local Government Turnaround Strategy which emerged from the assessments by contrast suggests that compliance requirements are in fact a cause of municipal dysfunctionality: “...municipalities have been overregulated or inappropriately regulated ...Due to the onerous compliance regime...many municipalities have tended to focus much of their energies on fulfilling compliance requirements rather than focusing on the critical issues of service delivery and enhancing performance” (Department of Cooperative Development and Traditional Affairs 2009(b):26).

13.3 An Examination of the Turnaround Strategy

13.3.1 “Root Cause of Failure”

The “Local Government Turnaround Strategy” (or “LGTAS,” as it is commonly referred to) which was the product of the assessment process was approved by the cabinet in December 2009.³¹¹

According to the LGTAS, the “root cause of much of municipal failure” was due to inappropriate national and provincial government policies, practices and “onerous requirements;”³¹² socio-economic conditions prevailing in many municipalities that had not been adequately addressed; political parties undermining the integrity and functioning of municipal councils through intra- and inter-party conflicts and inappropriate interference in councils and administration; a breakdown of values at a societal level that breeds unethical behaviour, corruption, a culture of non-payment and lack of accountability; communities engaging in destructive forms of protest including withholding of payment for local taxes and services; municipalities not being geared for delivering basic services and are not responsive and accountable enough to residents; and finally, an absence of communications resources and no accountability for how and when municipalities communicate to communities (Department of Cooperative Governance and Traditional Affairs 2009(b): 18-19).

13.3.2 Strategic Objectives and Interventions

Having identified what it considered to be the root causes of municipal failure, the turnaround strategy then identifies “five strategic objectives ...that will guide the LGTAS interventions and support framework...These are aimed at restoring the confidence of the

³¹¹The strategy is contained in a document entitled “Local Government Turnaround Strategy,” published by the Department of Cooperative Governance and Traditional Affairs in November 2009.

³¹² The LGTAS does not specify these purportedly inappropriate policies, practices and requirements.

majority of our people in our municipalities, as the primary expression of the developmental state at local level. These are:

- 1) ensure that municipalities meet the basic service needs of communities
- 2) build clean, effective, efficient, responsive and accountable local government
- 3) improve performance and professionalism in municipalities
- 4) improve national and provincial policy, oversight and support
- 5) strengthen partnerships between local government, communities and civil society”

(Department of Cooperative Governance and Traditional Affairs 2009(b):19).

These objectives are described in the turnaround strategy as being the “key drivers in order to rebuild and improve the basic requirements for a functional, responsive, effective, efficient, and accountable developmental local government.” (Department of Cooperative Governance and Traditional Affairs 2009(b):19).

13.3.3 Priorities

The LGTAS provided for a prioritisation of activities. These are divided between “immediate pre-2011” priorities and “post 2011” priorities. Pre-2011 Priorities include addressing immediate financial and administrative problems in municipalities; introducing regulations to stem indiscriminate hiring and firing; implementing a transparent municipal supply chain system; strengthening ward committee capacity and implementing a new ward committee governance model; and implementing “the revenue enhancement - Public Mobilisation” campaign. Post-2011 priorities include a single election for national, provincial and local government; all citizens having access to affordable basic services; the eradication of all informal settlements; the significant reduction of infrastructure backlogs; each municipality having the necessary ICT infrastructure and connectivity; and all provinces and municipalities having clean audits.³¹³

³¹³ The LGTAS identifies 13 “pre-2011” priorities and an equal number of “post-2011” priorities. Only a few examples of each are given here. The LGTAS contains a full list of priorities.

13.3.4 Key Intervention Areas

Complicating matters somewhat, yet another layer of priorities is provided in the LGTAS, this in the form of a list of “specific priorities required to ensure implementation of the LGTAS. This identifies seven “focus areas,” namely: (i) service delivery, (ii) governance, (iii) “establish a single window of coordination for local government”, (iv) “deepen people-centred government through a refined model of ward committees,” (v) local economic development, (vi) labour relations, and (vii) the intergovernmental fiscal system. Various “interventions” are prescribed under the focus areas; such interventions include “better planning and oversight over local delivery”; “address constitutional and legislative weaknesses in municipal governance and “professionalism and administrative stabilisation of local government.”³¹⁴

13.3.5 A Critique of the Turnaround Strategy

The Overview Report and LGTAS are remarkable in that they are frank about the fact that local government faces a crisis; for that reason, they are to be commended.

That said, the Overview Report and the LGTAS suffer from many critical weaknesses. The LGTAS is reminiscent of the White Paper on Local Government, in that it fails to identify and state accurately the challenges that face local government. Despite its stated intention to investigate the “underlying causes” of the weaknesses of governance and service delivery, there is very little evidence in either the Overview Report or the LGTAS to support their conclusions. Although the LGTAS identifies the purported “core areas of concern” and “the root cause of much municipal failure,” little evidence is presented to

³¹⁴ Responsibilities of national government under this focus area include ensuring (presumably by means of legislation or regulation) that senior managers belong to professional organisation and that senior managers are not suspended without the concurrence of the MEC for local government in the province concerned as well as of the national minister; strengthening the internal capacity of municipalities to reduce reliance on external consultants; and appointing qualified and skilled staff to oversee the implementation of by-laws.

show how these were identified, or to indicate the extent of the problems. In addition, little attempt is made in the strategy to establish a causal link between the stated causes and the actual failure of municipalities - for example, one of the root causes is stated as being “inappropriate national and provincial government policies, practices and onerous requirements,” but at no point is any hint given as to what the offending policies, practices and onerous requirements are, let alone how they contribute to municipal failure.

Similarly, there is an almost complete disconnect between the alleged root causes of failure, the strategic objectives, the proposed interventions, the pre-and post 2011 priorities, and the so-called specific priorities. The impression is created that these various components of LGTAS were conceived and elaborated independently of each other and then stitched together with no regard for their respective contents. It is also a matter of concern that a number of assertions and assumptions are stated as matters of fact with little or no evidence to support them (or at least, no evidence which is contained in LGTAS). In addition, the selection of priorities seems to be arbitrary. Furthermore, the LGTAS is vague in the extreme as to how these priorities and other interventions are to be implemented, providing little clue as to what in practice will be done to implement them. The result is that the LGTAS appears to consist largely of a series of unconnected “wish lists” with little indication as to how those wishes are to be achieved. Paradoxically, it contains very little that would pass for strategy.

This is perhaps due in part to the approach employed in the initial assessment process. Task teams were given a period of a little more than six weeks in which to conduct assessments and submit reports. It is questionable whether a reasoned, rigorous and properly analytical assessment covering every municipality in the country could have been performed in that time. The terms of reference also provided little guidance as to the scope of the assessments, the method of conducting them, and the analysis of information gathered in the course of those assessments.

One of the most curious features of LGTAS is the fact that it relies to a large extent on each municipality developing its own “tailor-made” turnaround strategy. Although these

tailor-made individual strategies were to follow guidelines provided by central government, it was largely left to the municipalities themselves to develop them. Whilst the notion of allowing municipalities to develop their own strategies might seem to be in keeping with a decentralised approach, it appears to overlook the fact that many of the municipalities simply lack the capacity to develop meaningful turnaround strategies of their own. The LGTAS itself provides very little guidance as to how individual municipalities are to develop their own strategies.

It seems that government's hopes for the success of the LGTAS are based on the fact that, according to the Deputy Minister of Cooperative Governance and Traditional Affairs, it is "different" in that "it's society's strategy.... the prospects of this strategy are better because it is based on a unique, comprehensive report on the state of local government in the country,"³¹⁵ because "there is going to be a phased, temperate approach to implementing it" and "because of the serious attention national government is giving local government."³¹⁶ It is premature to judge the success (or lack thereof) of the LGTAS; at this point, however, little has emerged to suggest that its objectives are being achieved.

13.4 The Role of Decentralisation and a Differentiated Approach

Despite the shortcomings of the LGTAS (and of the process leading up to it), it does appear to recognise the existence of at least some realities which prevail in the South African local government environment. For example, the LGTAS recognises the problem of non-compliance with the statutory framework, a theme which frequently emerges in the present study. It also recognises the grave challenges posed by the lack of institutional capacity, an issue which also emerges from the present study; in addition, as does the present study, the LGTAS recognises the dangers attaching to the ineffective application of public participation mechanisms.

³¹⁵ The report referred to is of course the overview report discussed earlier in this Chapter.

³¹⁶ Speech given by the Deputy Minister for Cooperative Governance and Traditional Affairs, on 4 November 2009 at the Development Bank of Southern Africa's "Knowledge Week."

Nonetheless, there is an apparent lack of appreciation in the LGTAS for the notion of decentralisation, and this, it is submitted, is a source of great weakness in the LGTAS. It appears not to have acknowledged in any way the decentralised basis of the South African model of local governance. It is submitted that a strategy aimed at turning around local government should have as its starting point a full analysis of the governance model on which it is based. Nowhere in the LGTAS is there any indication at all that there is any appreciation for the basic tenets or demands of that model, and nowhere is any attempt made to link those tenets and demands with the state of local government in the country.

It follows that an appropriate course of action for government to undertake is to re-evaluate the purpose and application of the principles of decentralisation in South African local government, and, based on that re-evaluation, to determine whether or not the decentralised model of local governance is the appropriate one for South Africa.

The Overview Report and the LGTAS refer disapprovingly to the “one size fits all” framework which purportedly applies to the South African local governance model. According to the LGTAS, “due to the assumption that municipalities are the same, government introduced uniform requirements, norms and standards, financial regime (*sic*) and service delivery targets. The reality however shows that some of these have placed onerous burden (*sic*) on low capacity municipalities” (Department of Cooperative Governance and Traditional Affairs 2009(b):26). It is said that this framework “is not based on differing municipal realities. The unintended consequences for municipalities have in some instances led to what may be defined as levels of municipal non-viability, both financially and in respect to functional performance, socio-economic vulnerability and ability to manage infrastructure development and investment” (Department of Cooperative Governance and Traditional Affairs 2009(a):29).

The notion of “one size *does not* fit all” has consequently become something of a new mantra in the context of the LGTAS, which calls for a “differentiated approach” to local government. Very little guidance is, however, given in the LGTAS as to government’s

understanding of what is encompassed in this differentiated approach, or as to its intentions in regard to the application of this approach, save for the rather ominous statement that “the state may have to play a more central directive role in the administration of some municipalities in future” (Department of Cooperative Governance and Traditional Affairs 2009(b):26). Cryptic though this statement may be, it does provide some hint that government may be willing to consider dispensing at least partially with the decentralised model, so as to enable more direct control of certain municipalities. If this is the case, then it does contradict one of the “key assumptions” which purportedly underlies the LGTAS, namely that “the structure of (the) local government system remains. Notwithstanding certain changes that may have to be effected, the overall architecture of local government is still sound.” (Department of Cooperative Governance and Traditional Affairs 2009(b):5). Given that decentralisation underpins the current structure of local government, it is difficult to imagine how the state can play a “more central directive role” whilst the structure of local government remains essentially unchanged. This might suggest a contradictory or at least ambivalent approach on the part of national government: on the one hand, there are signs that national government has recentralising designs; on the other, it apparently intends to retain the existing structure of local government.

Despite the fact that the notion of the “one-size-does-not-fit-all” approach is lacking in detail, it must be given serious attention on account of the potential consequences which it holds for the decentralised local governance model which prevails at present. The application of a differentiated approach must inevitably place constraints on decentralisation. The LGTAS is at least correct in concluding that an undifferentiated, “one-size-fits-all” approach demands a measure of uniformity for requirements, norms and standards for municipalities. Provided that those requirements properly balance the demands of efficient administration and a decentralised system, they are a natural and desirable consequence of having a comprehensively decentralised system, and the framework thereby constituted is an essential component of such a system. It is this framework which gives substance to the dimensions of decentralisation which have been previously discussed, and which in turn characterise a decentralised system.

The supplanting of the current model by a differentiated “one-size-does-not-fit-all” approach which permits a “more central directive” involvement in some municipalities raises a host of issues, both theoretical and practical. Presumably, provision would have to be made in a differentiated system for a means of classifying municipalities according to their ability to govern and to perform their powers and functions, so as to enable the identification of those which would be subject to “more central directive” control. It would also be necessary to determine how the various types of decentralisation as applied in various municipalities would be affected. The effect of a differentiated approach on the decentralised status of municipalities might in some cases be quite limited; for example, it might affect only certain aspects a municipality’s administrative autonomy, with the responsibility for the performing of only certain services being transferred to another sphere of government, whilst the municipality retains all other aspects of its autonomy. In other cases, the fiscally decentralised character of municipalities may be affected. For example, where the sustainability of local financial resources is questionable, reliance might be placed entirely on central government for funding, but the municipality would retain the right to exercise its powers and functions (and hence spend that funding) and would retain notional political autonomy (of course, one might question whether it is possible to retain political autonomy in such circumstances). Or, in a more extreme arrangement, an agency model of the kind discussed by Dollery and Johnson (2005) and Dollery and Crase (2006) might be applied. In such an arrangement, a municipality might simply retain its politically decentralised character, that is to say, it would have political autonomy as an elected body with jurisdiction over a given geographical area of jurisdiction, but would surrender operational control of its services to central or provincial government agencies which use central or provincial government funds. In effect, under such an arrangement, elected councils would serve as advisory bodies to the state agencies. Another (and the most extreme) possibility is that particular municipalities might be completely recentralised, with political, fiscal and administrative decentralisation being completely abandoned in favour of central control, with or without a measure of deconcentration.

The scenarios described above are purely speculative, as the present intention of government regarding differentiation and its “central directive role” is by no means clear and little indication has been given of what precisely those concepts might entail. There can, however, be little doubt that the implementation of a differentiated approach will be a complex process and one which is fraught with difficulties; it could well be disruptive and would almost certainly be costly. It would probably also be viewed with some disenchantment by local political elites, given that it will almost certainly always result in a diminution of local influence. Not least, there are constitutional considerations which need to be taken into account, as measures aimed at transferring or reducing local government prerogatives will have constitutional repercussions.

13.5 Concluding Remarks

The full significance of the LGTAS for local government and for the notion of decentralisation is as yet unclear. A reading of the LGTAS alone gives an incomplete indication of government’s intentions regarding the process and practicalities for turning local government around. The LGTAS was greeted with much fanfare at the time of its unveiling, and it appears that it generated enormous expectations. It is, however, difficult to assess, on available information, the levels of success which it has to date achieved or even to ascertain whether it has achieved any of its objectives; it is even more difficult to assess its prospects for future success. Similarly, it is difficult to speculate as to what consequences the LGTAS holds for the concept of decentralisation, and in particular, whether it foretells a process of at least partial recentralisation or whether the *status quo* will essentially remain, albeit with some modifications. The LGTAS is simply too ambivalent to allow for any confident predictions to be made in this regard.

Let it be assumed for the meantime, however, that “the structure of (the) local government system remains,” as indicated in the LGTAS, and that decentralisation, albeit perhaps in a modified form, will remain a key feature of the local governance model. Any turnaround strategy which is predicated on this model must, it is submitted, recognise the need for compliance, oversight, and the need for sufficient capacity to implement policy,

and must promote them. This in itself does not guarantee that the problems which at present beset local government in South Africa will be overcome; it is, however, an essential prerequisite without which there is little prospect of success.

Chapter 14

Conclusion

14.1 A Recapitulation

An idealised interpretation of the system of local government which prevails in South Africa is that the country has developed a framework for decentralised governance which aims to transfer key functions and a significant measure of autonomy to local authorities. In this interpretation, South Africa has applied best practices which have been advocated by international agencies and donor governments in the West (Tapscott 2008), and has followed the example of many countries which have in recent decades implemented reforms designed to transfer greater power to sub-national levels of government and provide a more substantial policymaking and oversight role to citizens at the local level.

There are several presumed benefits of such decentralisation policies, the most commonly cited being the promotion of democracy (including participatory democracy through public participation mechanisms) and improved service delivery. It is argued that the more responsive system of governance which results from decentralisation prevents disillusionment with the democratic process and enhances legitimacy. This implies that local institutions, if they play a meaningful role in the lives of citizens, can positively influence attitudes towards the wider political establishment.

It must, however, be acknowledged that the decentralisation process can be a double-edged sword. If the goals of citizen involvement and greater accountability are not met, the result may be to undermine citizen support for the system (Hiskey and Seligson 2003). Similarly, the absence of the basic conditions required for decentralised systems, such as adequate institutional capacity, could lead to institutional failure and possibly to attempts by central government to revert to a less decentralised model of governance.

Notwithstanding these reservations, an optimistic view of decentralisation enjoys widespread currency and it may be said that decentralisation is generally seen as a process which is beneficial and which promotes good governance.

Despite the apparent virtues of decentralisation, and despite South Africa having adopted a sophisticated constitutional, policy and statutory framework which was on the face of it intended to give effect to a decentralised system, the South African sphere of local government is faced with a crisis of credibility and in many respects it has proved to be incapable of fulfilling its constitutional mandate.

As was noted in Chapter 1, this study seeks to describe the extent to which the precepts of decentralisation have been incorporated in the South African local government framework and the extent to which they are applied in practice within that framework, the ultimate object being to contribute towards an understanding of the difficulties which confront South African local government. This study therefore set out to address two questions, namely:

- To what extent are the principles of decentralisation incorporated and supported in the regulatory framework of Local Government in South Africa? and
- To what extent are the principles of decentralisation applied in practice within this framework?

These questions are considered in the next two sections.

14.2 A Decentralised Local Governance Framework in South Africa?

The Constitution affirms that a municipality has the right to govern on its own initiative the local government affairs of its community and that national and provincial governments may not compromise or impede a municipality's right to exercise its powers or perform its functions. As we have seen in Chapters 7 to 12, the various "dimensions of decentralisation" which were identified for purposes of this study have all been reflected,

to a greater or lesser extent, in the local governance framework which applies in South Africa. Thus, in addition to constitutional security for local government being entrenched (dimension (i)), constitutional provision and statutory provision is made in the framework for size of decentralised units (dimension (ii)), the democratic process (dimension (iii)) and intergovernmental relations (dimension (iv)). Provision is made for a local government executive structure (dimension (v)), as it is for local government administrative authority (dimension (vi)). The enhancing of institutional capacity (dimension (vii)), as well as for a public participation process (dimension (viii)) are also clearly provided for. The powers and functions of municipalities, reflected in the dimension of jurisdictional scope (dimension (ix)) are constitutionally guaranteed; and similarly, legislative authority of local government (dimension (x)) is provided for in the constitution. Revenue raising authority (dimension (xi)) and revenue sharing (dimension (xii)) are also provided for in the Constitution and subsequent legislation.

Whilst these dimensions of decentralisation are largely reflected in the South African local government framework, two cautionary notes must be sounded. The first is that there are serious challenges relating to the implementation by all spheres of government of many of the dimensions of decentralisation. The second is that signs are emerging that national government is attempting to assert its control in relation to certain powers that would have been expected, in a decentralised system, to belong in the domain of sub-national governments. The potential for national government to do so has in fact to some extent long been embedded in legislation; it will be recalled from Chapter 8 that the Systems Act provides for wide powers of ministerial regulation-making which, if exercised, could have the effect of “recentralising” power. Whilst the regulation-making powers under the Systems Act have hitherto been far from exercised to their fullest extent, national government has in other ways signalled its willingness to make inroads into the autonomy of local government - for example, in the form of the proposed Seventeenth Amendment to the Constitution;³¹⁷ and the proposed amendment to the Systems Act

³¹⁷ See Chapter 11.

regarding the appointment of senior staff.³¹⁸ In addition, as was also seen in Chapter 8, the MFMA reflects strong tendencies towards centralisation. The frequently raised possibility of establishing a single civil service which includes municipal staff is another example; furthermore, as we have seen in the previous chapter, the LGTAS also hints at the application of greater “central directive control” and of a differentiated approach to municipalities which could have the effect of reducing local autonomy.

It is perhaps not surprising that centralising tendencies have emerged. National governments tend to be jealous of their powers; they give them up reluctantly, and then may go to great lengths in trying to wrest them back (Wunsch 2001; Campos and Hellman 2005). As we have seen, although general consensus was ultimately achieved during South Africa’s constitutional negotiating process regarding the desirability of a decentralised system, it appears that the ANC was during much of the process less than enthusiastic about decentralisation. It is not inconceivable that a government which reluctantly devolves powers would look for an opportunity to regain them, and when breakdowns in local government occur, central government is presented with a justification for embarking on a recentralisation process. It has been argued that because the preconditions for the effective decentralisation were not in place in South Africa, the policy of transferring functions to local authorities would set many of them up for failure and that this would create political pressures to recentralise control (Tapscott 2008). Whilst the essentially decentralised character of the South African local government framework remains intact at present, it is submitted that such pressures are evident.

In summary, in answer to the first question, it is submitted that the local government framework is one which largely reflects a system of decentralised local governance, but there are clear signs that its decentralised character is subject to erosion.

³¹⁸ See Chapter 8.

14.3 The Application of the Principles of Decentralisation in Practice

The second question is concerned with the extent to which the principles of decentralisation are applied in practice within the framework of local government.

As we have seen, there are several dimensions, largely of a fiscal or administrative character, in respect of which the regulatory framework imposes specific obligations on municipalities or grants to them particular powers. As has emerged from this study, it is clear that many of these institutions are unwilling or unable to comply with those obligations, in that they have failed to give effect to the relevant statutory provisions, or to exercise those powers. In this regard, the following are the most pressing issues which emerged from the present study:

- Failure to implement mechanisms for the effective performance of executive authority (this relates to dimension (v));
- Failure to implement systems and mechanisms to promote institutional capacity (this relates to dimension (vii));
- Failure to implement systems and mechanisms to promote public participation and provide information (this relates to dimension (viii));
- Inability or unwillingness to perform powers and functions, this despite municipalities having been given the constitutional mandate to do so (this relates to dimension(ix));
- Failure to support the performance of powers and functions with the enactment of by-laws, as provided by the constitution (this relates to dimension (x)); and
- Failure to implement mechanisms and systems to give effect to revenue-raising authority (this relates to dimension (xi)).

Each of the issues referred to above reflects a failure of a critical dimension of decentralisation; and taken together, they indicate that in practice, the improper application of the principles of decentralisation is widespread. The significance thereof lies in the fact that it is essential, in order for a decentralised system of government to succeed, that local governments comply with the regulatory framework that has been

established to give effect to the concept of decentralisation. According to the World Bank, one of the most important lessons to be learnt from experiences of decentralisation is “that a system based on rules produces better results than one that is not. Explicit rules setting out the division of functional responsibilities among levels of government reduce ambiguity and increase political accountability” (World Bank 2000:124). It might be added that explicit rules relating to the implementation of systems and mechanisms required to give effect to the local governance framework are also essential. As has been suggested before, the mere existence of rules does not guarantee the success of any system of governance, but in the absence of such rules, or in the event of failure to apply such rules, there is little prospect of success at all. This is not to suggest, of course, that the need for rules should become an excuse for central government to regain previously decentralised powers, a danger alluded to in the previous section. What is required is that an appropriate balance be struck in which national government puts in place a governance framework without undermining the principle of devolution of powers. It also requires that the fostering of a culture of compliance at local level with the relevant rules - something which the findings of this study suggest is lacking in South Africa.

14.4 The Challenge: Overcoming Inertia

In Chapter 3, a number of potential challenges to decentralisation were noted. These include uninterested and overwhelmed governments, elite capture, clientelism, capacity constraints, funding constraints and intergovernmental tensions.

In the South African context, a fundamental challenge which needs to be addressed is that of the “uninterested, inertia-bound and overwhelmed” government. In order for a decentralised system to flourish, the central government must have the political will, capacity and commitment to drive the decentralisation process and entrench it. In South Africa, the tolerance displayed by national government (as well as provincial governments) towards the inability or unwillingness of local governments to comply with and implement the local governance framework suggests a lack of just that will, capacity and commitment, and indicates an indifference or inability on the part of central and

provincial governments to ensure the implementation of critical elements of the framework. The inevitable lack of institutional incapacity which prevails at local government level, is reflected in the inability of local government to implement the requirements of the local government framework which applies in South Africa. It should come as no surprise, therefore, that local institutions are unable to perform their constitutionally mandated powers and functions, to develop and implement systems for community participation, or to develop and implement systems for effectively applying executive authority, amongst other things. Combined with weaknesses in oversight measures and an apparent indifference to the need for accountability, each of these failures exacerbates an already fragile state of affairs.

14.5 Concluding Remarks

South Africa's process of decentralisation has been described as a transition from a non-democratic type of decentralisation to a democratic type of decentralisation following a comprehensive "big-bang, political-cum-economic devolution" (Bardhan and Mookherjee 2006:36). There was no discernible sequencing of the various types of decentralisation - that is, political, fiscal and administrative - of the kind described by Falleti (2005), all three types having been provided for simultaneously in the Constitution.

It may be argued that, given the obvious shortcomings displayed by many municipalities in South Africa, this process of rapid decentralisation proved to be too much, too soon, for institutions with limited capacity to absorb and cope with, or for a central government not fully persuaded of the merits of decentralisation to implement and oversee.³¹⁹ On the other hand, it is widely recognised in the decentralisation literature³²⁰ that time and

³¹⁹ The LGTAS apparently does not subscribe to the notion that the adoption of the current local government system was a rapid process. One of the "key assumptions" on which the LGTAS is premised is that "The local government system is still new and is evolving. The new system of local government was always intended to be phased in over time and the current problems must be seen as part of an effort to learn and correct as we continue with implementation" (Department of Cooperative Governance and Traditional Affairs 2009(b):5).

³²⁰ See for example Niksic (2004) and the literature referred to therein at p 357.

patience are needed in order for decentralisation to work. That is doubtless correct; but given that South Africa has had ample opportunity to make decentralisation work, and that attempts to revitalise local government - such as are reflected in the LGTAS - are not especially encouraging, one may be forgiven for concluding that the prospects for the successful implementation of a decentralised system are limited. This is a somewhat sobering realisation, given the importance of a favourable outcome for the decentralisation process. It has long been recognised that “successful decentralization improves the efficiency and responsiveness of the public sector while accommodating potentially explosive political forces. Unsuccessful decentralization threatens economic and political stability and disrupts the delivery of services” (World Bank 1999:107). Decentralisation as a process for promoting good local governance can and does work if implemented properly; haphazard implementation, on the other hand, will almost inevitably result in disappointment.

That being the case, and given that a crisis of expectations already exists in South Africa (Tapscott 2008), a question which must inevitably arise is whether decentralisation is the appropriate model to apply in South Africa in order to achieve the constitutionally imposed objects of local government.³²¹ The answer, regrettably, has to be conditional in nature. Decentralisation is a means to an end, but in order for that end to be achieved, the process must be appropriately supported and sound practice must be enforced bureaucratically and politically. This demands a commitment from all spheres of government to the decentralisation process. This in turn implies a respect for, and understanding of, the principles which underlie decentralisation as a concept. It also demands proper application of the rules, systems and mechanisms which are put in place in order to give effect to decentralisation reforms. As much as anything else, it demands that government at every level be properly capacitated in order to enable those reforms to be implemented. If these elements can be brought to bear in the South African context,

³²¹ Namely, to provide democratic and accountable government for local communities; to ensure the provision of services to communities in a sustainable manner; to promote social and economic development; to promote a safe and healthy environment; and to encourage the involvement of communities and community organisations in the matters of local government (Section 152 of the Constitution).

then decentralisation as a model for local governance can be made to work. In their absence, however, the attempt at decentralisation is likely to prove futile and wasteful, and result in the continued failure of service delivery and the consequent risk of political and economic instability.

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Appendix A:

Table 1: Classification of Municipalities

This table shows how the various municipalities examined for purposes of this study are categorised according to various classification criteria. See Chapter 5 of the text, especially pages 83 to 86, for a full description of the various spectrums in which they are categorised.

Province	Treasury Capacity Classification	CoGTA functionality/socio-economic Classification	Infrastructure Investment Framework	Local or District Municipality
EC 1	High	3	B1	Local
EC 2	Low	2	B4	Local
EC 3	Low	1	B3	Local
FS 1	Medium	3	B3	Local
FS 2	Low	2	B3	Local
FS 3	Low	2	B3	Local
FS 4	Medium	3	B3	Local
Gng 1	Medium	3	B2	Local
KZN 1	Low	2	B3	Local
KZN 2	Low	1	B4	Local
KZN 3	Low	1	B3	Local
KZN 4	Low	1	B3	Local
Lim 1	Medium	3	B3	Local
Lim 2	Medium	2	B3	Local
Lim 3	Low	1	B4	Local
Lim 4	High	3	B1	Local
Lim 5	Low	3	B3	Local
Lim 6	High	2	B4	Local
Mpum 1	Low	2	B4	Local
Mpum 2	Low	3	B3	Local

Table 1 (ctd)

Province	Treasury Capacity Classification	CoGTA functionality/socio-economic Classification	Infrastructure Investment Framework	Local or District Municipality
Mpum 3	High	3	B3	Local
Mpum 4	Medium	2	B4	Local
NC 1	Medium	4	B3	Local
NC 2	High	4	B1	Local
NC 3	Medium	3	B3	Local
NC 4	Low	2	B3	Local
NW 1	Low	3	B3	Local
NW 2	Low	2	B2	Local
NW 3	Low	2	B4	Local
NW 4	Low	2	B3	Local
WC 1	Medium	4	B3	Local
WC 2	Medium	4	B2	Local
WC 3	Low	4	B3	Local
WC 4	Low	4	B3	Local
WC 5	Medium	n/a	C1	District
WC 6	Medium	n/a	C1	District
WC 7	Medium	n/a	C1	District

Appendix B

Table 2 (part 1): Compliance with Systems Requirements: Columns i to vi

This table shows the extent to which the municipalities in the sample used for this study comply with certain legislative systems requirements. The various columns of part 1 deal with issues referred to in the text of the study as follows: Column (i): Chapter 8, page 125; Column(ii): Chapter 9, page 136; Column (iii): Chapter 9, page137; Column (iv): Chapter9, page 137; Column (v) Chapter 9, page 137; Column (vi): Chapter 9, page 137

	i	ii	iii	iv	v	vi
Muni- cipality	Definition of roles and res- ponsibilities	Policy framework for staff establish- ment	Approved Staff establish- ment	Job De- scriptions	Conditions of Service	Mechanism for evaluating and reviewing staff establishment
EC 1	Yes	Yes	Yes	Yes	Yes	Yes
EC 2	No	No	Yes	No	Yes	No
EC 3	No	No	Yes	No	Yes	No
FS 1	Unknown	No	Yes	Yes	Yes	No
FS 2	No	No	Yes	No	Yes	No
FS 3	No	No	Yes	No	Yes	No
FS 4	Yes	No	Yes	Yes	Yes	No
Gng 1	Yes	No	Yes	No	Yes	No
KZN 1	No	No	Yes	No	Yes	No
KZN 2	No	No	Yes	Yes	Yes	No
KZN 3	No	No	Yes	No	Yes	No
KZN 4	No	No	Yes	No	Yes	No
Lim 1	Yes	No	Yes	Yes	Yes	No
Lim 2	No	No	Yes	Yes	Yes	No
Lim 3	Unknown	No	Yes	No	Yes	No
Lim 4	Yes	No	Yes	Yes	Yes	No
Lim 5	In Process	No	Yes	Yes	Yes	No

Table 2 (part 1) (ctd).

	i	ii	iii	iv	v	vi
Muni- cipality	Definition of roles and res- ponsibilities	Policy framework for staff establish- ment	Approved Staff establish- ment	Job De- scriptions	Conditions of Service	Mechanism for evaluating and reviewing staff establishment
Lim 6	Yes	No	Yes	Yes	Yes	No
Mpum 1	No	No	Yes	No	Yes	No
Mpum 2	No	No	Yes	No	Yes	No
Mpum 3	Yes	No	Yes	Yes	Yes	No
Mpum 4	No	No	Yes	No	Yes	No
NC 1	No	No	Yes	No	Yes	No
NC 2	In Process	No	Yes	Yes	Yes	No
NC 3	No	No	Yes	No	Yes	No
NC 4	Unknown	No	Yes	Yes	Yes	No
NW 1	No	No	Yes	No	Yes	No
NW 2	No	No	Yes	No	Yes	No
NW 3	No	No	Yes	No	Yes	No
NW 4	No	No	Yes	No	Yes	No
WC 1	Yes	No	Yes	Yes	Yes	No
WC 2	No	No	Yes	No	Yes	No
WC 3	No	No	Yes	Yes	Yes	No
WC 4	Yes	No	Yes	Yes	Yes	No
WC 5	No	No	Yes	No	Yes	No
WC 6	No	No	Yes	Yes	Yes	No
WC 7	In Process	No	Yes	Yes	Yes	No

Appendix B (ctd)

Table 2 (part 2): Compliance with Systems Requirements: Columns vii to xii

The various columns of part 2 of Table 2 deal with issues referred to in the text of the study as follows: Column (vii): Chapter 9, page 138; Column (viii): Chapter 9, page 138; Column (ix): Chapter 9, page 141; Column (x): Chapter 9, page 141; Column (xi): Chapter 9, page 141; Column (xii): Chapter 9, page 141

	vii	viii	ix	x	xi	xii
Muni- cipality	Municipal Manager Appointed	Full Complement of Senior Staff	System for recruitment of Staff	System for supervision and Manage- ment of Staff	System for monitoring measuring and evaluation of staff performance	System for promotion and demotion of staff
EC 1	Yes	No	Yes	Yes	Yes	Yes
EC 2	Yes	No	Yes	No	Yes	No
EC 3	Yes	No	Yes	No	Yes	No
FS 1	No	No	Yes	No	Yes	No
FS 2	Yes	Yes	No	No	No	No
FS 3	Yes	No	Yes	No	Yes	No
FS 4	No	No	Yes	No	Yes	No
Gng 1	Yes	No	Yes	No	Yes	No
KZN 1	Yes	No	Yes	No	Yes	No
KZN 2	Yes	Yes	Yes	No	Yes	No
KZN 3	Yes	No	Yes	No	Yes	No
KZN 4	Yes	Yes	Yes	No	No	No
Lim 1	Yes	Yes	Yes	No	Yes	No
Lim 2	Yes	No	Yes	No	Yes	No
Lim 3	Yes	No	No	No	Yes	No
Lim 4	Yes	No	Yes	No	Yes	No
Lim 5	Yes	Yes	Yes	No	Yes	Yes
Lim 6	Yes	No	Yes	No	Yes	No

Table 2 (part 2) (ctd).

	vii	viii	ix	x	xi	xii
Muni- cipality	Municipal Manager Appointed	Full Complement of Senior Staff	System for recruitment of Staff	System for supervision and Manage- ment of Staff	System for monitoring measuring and evaluation of staff performance	System for promotion and demotion of staff
Mpum 1	Yes	No	Yes	No	No	No
Mpum 2	Yes	No	Yes	No	Yes	No
Mpum 3	No	No	Yes	No	Yes	No
Mpum 4	Yes	No	No	No	Yes	No
NC 1	Yes	No	Yes	No	Yes	No
NC 2	No	No	Yes	No	Yes	No
NC 3	Yes	No	Yes	No	Yes	No
NC 4	Yes	No	No	No	Yes	No
NW 1	Yes	No	Yes	No	Yes	No
NW 2	No	No	No	No	No	No
NW 3	Yes	No	Yes	No	Yes	No
NW 4	Yes	No	Yes	No	Yes	No
WC 1	Yes	Yes	Yes	Yes	Yes	No
WC 2	No	No	Yes	No	Yes	No
WC 3	No	No	Yes	No	Yes	No
WC 4	Yes	Yes	Yes	No	Yes	No
WC 5	No	No	Yes	No	Yes	No
WC 6	No	No	Yes	No	Yes	No
WC 7	No	No	Yes	No	Yes	No

Appendix B

Table 2 (part 3): Compliance with Systems Requirements (ctd): Columns xiii to xviii

The various columns of part 3 of Table 2 deal with issues referred to in the text of the study as follows: Column (xiii): Chapter 9, page 142; Column (xiv): Chapter 9, page 142; Column (xv): Chapter 9, page 142; Column (xvi): Chapter 9, page 142; Column (xvii): Chapter 9, page 142; Column (xviii): Chapter 9, page 149

	xiii	xiv	xv	xvi	xvii	xviii
Municipality	System for transfer of staff	Grievance procedures	Disciplinary procedures	System for Investigation of misconduct	System for Dismissal and retrenchment of staff	Performance management System
EC 1	No	Yes	Yes	No	No	Yes
EC 2	No	Yes	Yes	No	No	No
EC 3	No	Yes	Yes	No	No	No
FS 1	No	Yes	Yes	No	No	No
FS 2	No	Yes	Yes	No	No	No
FS 3	No	Yes	Yes	No	No	No
FS 4	No	Yes	Yes	No	No	No
Gng 1	No	Yes	Yes	No	No	No
KZN 1	No	Yes	Yes	No	No	No
KZN 2	No	Yes	Yes	No	No	No
KZN 3	No	Yes	Yes	No	No	No
KZN 4	No	Yes	Yes	No	No	No
Lim 1	No	Yes	Yes	No	No	No
Lim 2	No	Yes	Yes	No	No	No
Lim 3	No	Yes	Yes	No	No	No
Lim 4	No	Yes	Yes	No	No	Yes
Lim 5	No	Yes	Yes	Yes	No	No

Table 2 (part 3) (ctd).

	xiii	xiv	xv	xvi	xvii	xviii
Municipality	System for transfer of staff	Grievance procedures	Disciplinary procedures	System for Investigation of misconduct	System for Dismissal and retrenchment of staff	Performance management System
Lim 6	No	Yes	Yes	No	No	No
Mpum 1	No	Yes	Yes	No	No	No
Mpum 2	No	Yes	Yes	No	No	No
Mpum 3	No	Yes	Yes	No	No	No
Mpum 4	No	Yes	Yes	No	No	No
NC 1	No	Yes	Yes	No	No	No
NC 2	No	Yes	Yes	No	No	No
NC 3	No	Yes	Yes	No	No	No
NC 4	No	Yes	Yes	No	No	No
NW 1	No	Yes	Yes	No	No	No
NW 2	No	Yes	Yes	No	No	No
NW 3	No	Yes	Yes	No	No	No
NW 4	No	Yes	Yes	No	No	No
WC 1	No	Yes	Yes	No	Yes	No
WC 2	No	Yes	Yes	No	No	No
WC 3	Yes	Yes	Yes	No	No	No
WC 4	No	Yes	Yes	No	No	No
WC 5	No	Yes	Yes	No	No	No
WC 6	Yes	Yes	Yes	No	No	No
WC 7	No	Yes	Yes	No	No	No

Appendix B

Table 2 (part 4): Compliance with Systems Requirements (ctd): Columns xix to xxiii

The various columns of part 4 of Table 2 deal with issues referred to in the text of the study as follows: Column (xix): Chapter 10, page 150; Column (xx): Chapter 10, page 155; Column (xxi): Chapter 10, page 157; Column (xxii): Chapter 10, page 158; Column (xxiii): Chapter 10, page 142; Column (xviii): Chapter 10, page 158.

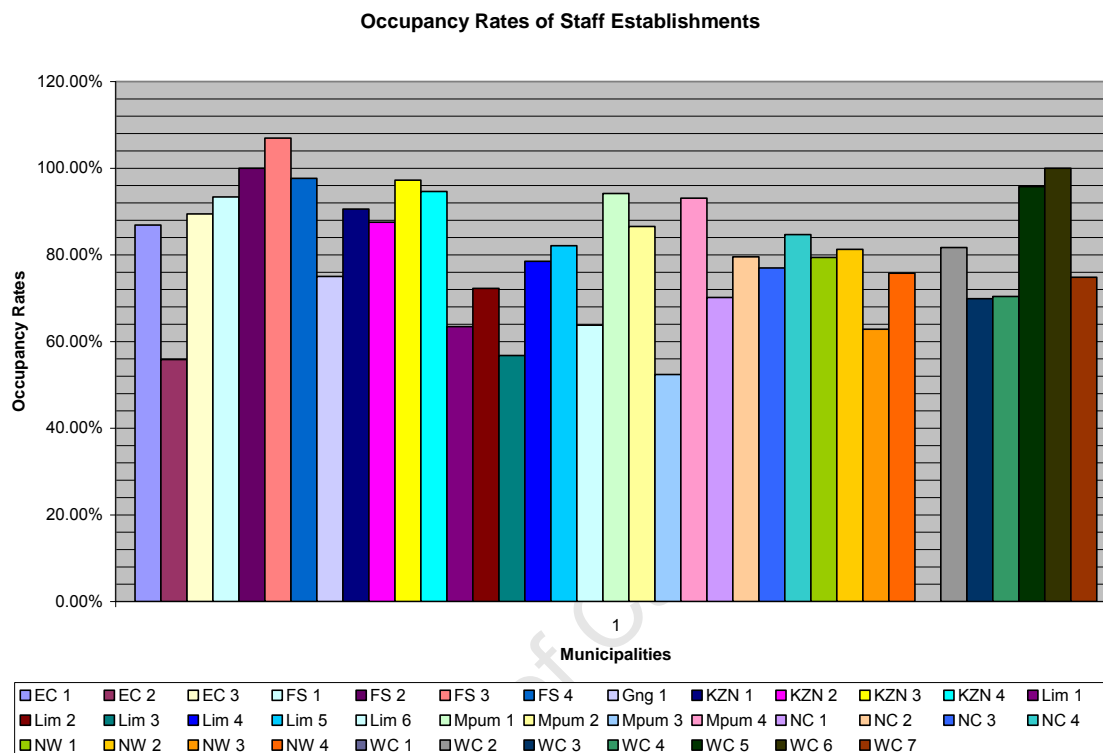
	xix	xx	xxi	xxii	xxiii
Municipality	Policy on Public Participation	Communications Policy	Website	Ward Committee System	Ward Committee Rules
EC 1	Yes	Yes	Yes	No Info	No Info
EC 2	No	No	No	Yes	No
EC 3	No	Yes	No	Yes	No
FS 1	No	No	No content	Yes	Yes
FS 2	No	No	No	No Info	No Info
FS 3	No	No	Dysfunctional	Yes	No
FS 4	Yes	Yes	Yes	Yes	Yes
Gng 1	No	No	Dysfunctional	Yes	No
KZN 1	No	No	Outdated	Yes	
KZN 2	No	No	No	Yes	No
KZN 3	No	No	No	Yes	No
KZN 4	No	Yes	No	Yes	No
Lim 1	Yes	Yes	Yes	Yes	Yes
Lim 2	No	No	Dysfunctional	No Info	No Info
Lim 3	No	No	Outdated	No Info	No Info
Lim 4	Yes	Yes	Yes	Yes	Yes
Lim 5	Yes	Yes	Outdated	Yes	Yes
Lim 6	Yes	No	Outdated	Yes	Yes

Table 2 (part 4) (ctd).

	xix	xx	xxi	xxii	xxiii
Municipality	Policy on Public Participation	Communications Policy	Website	Ward Committee System	Ward Committee Rules
Mpum 1	No	No	Outdated	Yes	Yes
Mpum 2	No	No	Outdated	Yes	No
Mpum 3	Yes	Yes	Yes	Yes	Yes
Mpum 4	No	No	Outdated	No Info	No Info
NC 1	No	No	No	No Info	No Info
NC 2	Yes	Yes	Outdated	Yes	Yes
NC 3	Yes	No	Outdated	No Info	No Info
NC 4	No	No	Outdated	Yes	No
NW 1	No	No	Dysfunctional	Yes	No
NW 2	No	No	Dysfunctional	No Info	No Info
NW 3	No	No	Outdated	No Info	No Info
NW 4	No	No	No	Yes	Yes
WC 1	No	Yes	Outdated	Yes	Yes
WC 2	No	No	Outdated	Yes	Yes
WC 3	No	Yes	Dysfunctional	Yes	Yes
WC 4	Yes	No	Outdated	No Info	No Info
WC 5	No	No	Dysfunctional	N/a	N/a
WC 6	Yes	No	Outdated	N/a	N/a
WC 7	No	No	Outdated	N/a	N/a

Appendix C

Graph 1

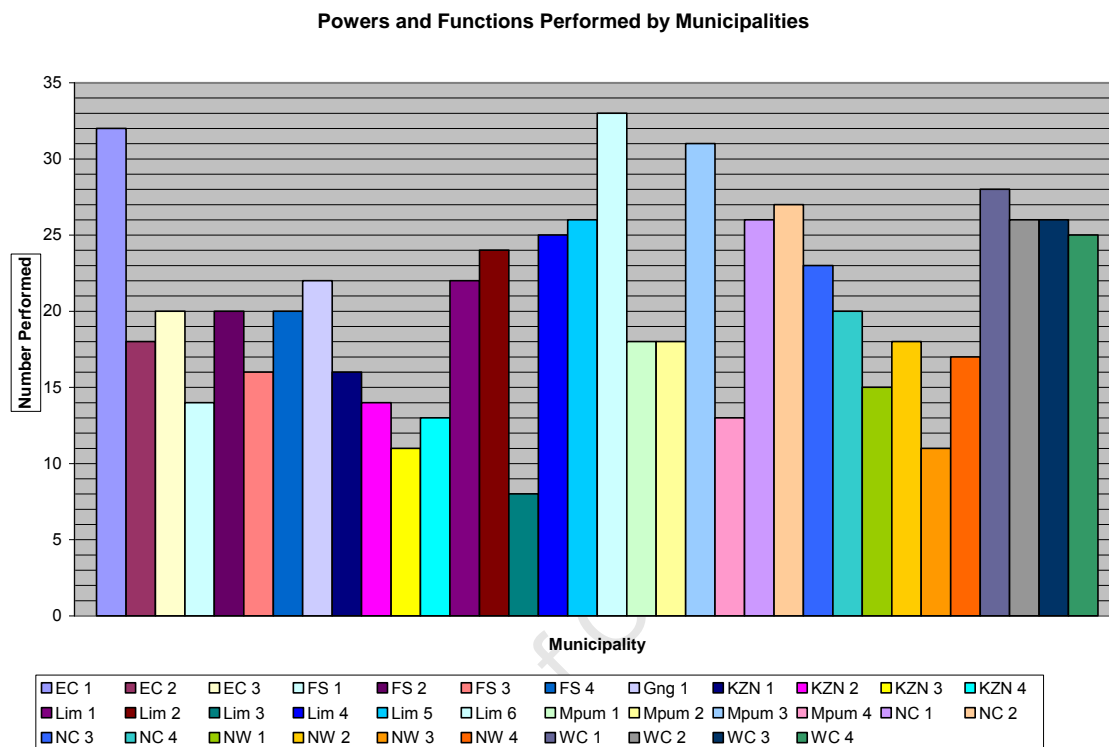


Note: No data available for WC 1

This graph shows the extent to which positions in the staff establishment of each municipality in the sample are occupied. See Chapter 9, especially page 138, for discussion.

Appendix D

Graph 2



This graph shows the number of powers and functions performed by each municipality in the sample. A total of 38 such powers and functions is provided for in Part 2 of Schedule 4 and Part 2 of Schedule 5 to the Constitution. See section 11.2.3 of Chapter 11 (page 168 and following) of the study for discussion.

Appendix E

Table 3: Compliance with Requirements Relating to By-laws

Table 3 shows the extent to which municipalities in the sample comply with specific requirements regarding the adoption of by-laws. The various columns deal with issues referred to in the text of the study as follows: Column (i): Chapter 11, page 178; Column (ii): Chapter 11, page 178; Column (iii): Chapter 11, page 178; Columns (iii)-(iv): Chapter 11, page 180.

	i	ii	iii	iv	v	vi
Municipality	By-laws Reviewed	Municipal Code	Rules and Orders By-law	Tariff By-law	Credit Control By-law	Rates By-law
EC 1	Yes	Yes	Yes	Yes	Yes	Yes
EC 2	No	No	No	No	No	No
EC 3	No	No	No	No	Yes	No
FS 1	No	No	No	No	No	No
FS 2	No	No	No	No	No	No
FS 3	No	No	Yes	No	No	No
FS 4	Yes	Yes	No	Yes	Yes	Yes
Gng 1	No	No	Yes	No	No	No
KZN 1	No	No	No	No	No	No
KZN 2	No	No	No	No	No	No
KZN 3	No	No	No	No	No	No
KZN 4	No	No	No	No	No	No
Lim 1	No	Yes	No	No	No	No
Lim 2	No	No	No	Yes	Yes	No
Lim 3	No	No	No	No	No	No
Lim 4	No	No	No	Yes	Yes	Yes
Lim 5	No	No	Yes	Yes	Yes	Yes
Lim 6	No	No	Yes	No	No	No

Table 3 (ctd).

	i	ii	iii	iv	v	vi
Municipality	By-laws Reviewed	Municipal Code	Rules and Orders By-law	Tariff By-law	Credit Control By-law	Rates By-law
Mpum 1	No	No	No	No	No	No
Mpum 2	No	No	No	No	No	No
Mpum 3	No	No	No	Yes	Yes	Yes
Mpum 4	No	No	No	No	No	No
NC 1	No	No	No	No	No	No
NC 2	No	Yes	Yes	No	Yes	No
NC 3	No	No	No	No	No	No
NC 4	Yes	No	No	No	Yes	No
NW 1	No	No	No	No	No	No
NW 2	No	No	No	No	No	No
NW 3	No	No	No	No	No	No
NW 4	No	No	No	No	No	No
WC 1	No	Yes	Yes	Yes	Yes	Yes
WC 2	No	No	No	No	Yes	No
WC 3	No	No	No	No	Yes	No
WC 4	Yes	Yes	Yes	Yes	Yes	Yes
WC 5	N/a	No	Yes	No	No	No
WC 6	N/a	No	No	No	No	No
WC 7	N/a	No	Yes	No	No	No

Appendix F

Table 4: Compliance with Requirements Relating to Fiscal Policies and By-laws

Table 4 shows the extent to which municipalities in the sample comply with specific requirements regarding the adoption of by-laws. The various columns deal with issues referred to in the text of the study as follows: Column (i): Chapter 12, page 188; Column (ii): Chapter 12, page 189; Column (iii): Chapter 12, page 189. The data contained in Columns (iii)-(iv) Table 4 are the same as contained in Columns (iii)-(iv) of Table 3, but are repeated in Table 4 for ease of reference and for the sake of comparison.

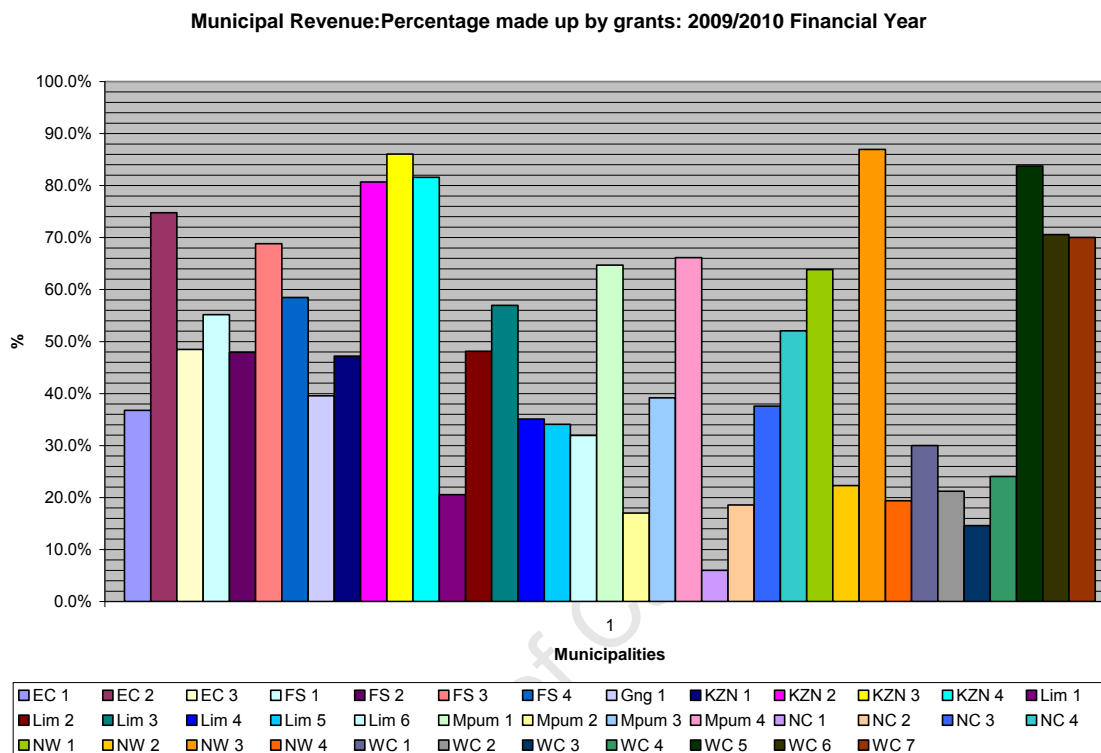
	i	ii	iii	iv	v	vi
Municipality	Tariff Policy	Credit Control Policy	Rates Policy	Tariff By-law	Credit Control By-law	Rates By-law
EC 1	Yes	Yes	Yes	Yes	Yes	Yes
EC 2	Yes	Yes	No	No	No	No
EC 3	Yes	Yes	Yes	No	Yes	No
FS 1	Unknown	Unknown	Unknown	No	No	No
FS 2	Unknown	Unknown	Unknown	No	No	No
FS 3	Yes	Yes	No	No	No	No
FS 4	Yes	Yes	Yes	Yes	Yes	Yes
Gng 1	Yes	Yes	Yes	No	No	No
KZN 1	Yes	Yes	Yes	No	No	No
KZN 2	Yes	Yes	Unknown	No	No	No
KZN 3	No	Yes	No	No	No	No
KZN 4	Yes	Yes	Yes	No	No	No
Lim 1	Yes	Yes	Yes	No	No	No
Lim 2	Yes	Yes	Yes	Yes	Yes	No
Lim 3	Unknown	Unknown	Unknown	No	No	No
Lim 4	Yes	Yes	Yes	Yes	Yes	Yes
Lim 5	Yes	Yes	Yes	Yes	Yes	Yes
Lim 6	Yes	Yes	Yes	No	No	No

Table 4 (ctd).

	i	ii	iii	iv	v	vi
Municipality	Tariff Policy	Credit Control Policy	Rates Policy	Tariff By-law	Credit Control By-law	Rates By-law
Mpum 1	Unknown	Unknown	Unknown	No	No	No
Mpum 2	No	Yes	No	No	No	No
Mpum 3	Yes	Yes	Yes	Yes	Yes	Yes
Mpum 4	Unknown	Unknown	Unknown	No	No	No
NC 1	Unknown	Unknown	Yes	No	No	No
NC 2	Yes	Yes	Yes	No	Yes	No
NC 3	Yes	Yes	Yes	No	No	No
NC 4	No	No	No	No	Yes	No
NW 1	Unknown	Unknown	Yes	No	No	No
NW 2	No	No	No	No	No	No
NW 3	Unknown	Unknown	Unknown	No	No	No
NW 4	Unknown	Unknown	Yes	No	No	No
WC 1	Yes	Yes	Yes	Yes	Yes	Yes
WC 2	Yes	Yes	Yes	No	Yes	No
WC 3	Yes	Yes	Yes	No	Yes	No
WC 4	Yes	Yes	Yes	Yes	Yes	Yes
WC 5	Yes	Yes	Unknown	No	No	No
WC 6	Yes	Yes	Unknown	No	No	No
WC 7	Yes	Yes	Unknown	No	No	No

Appendix G

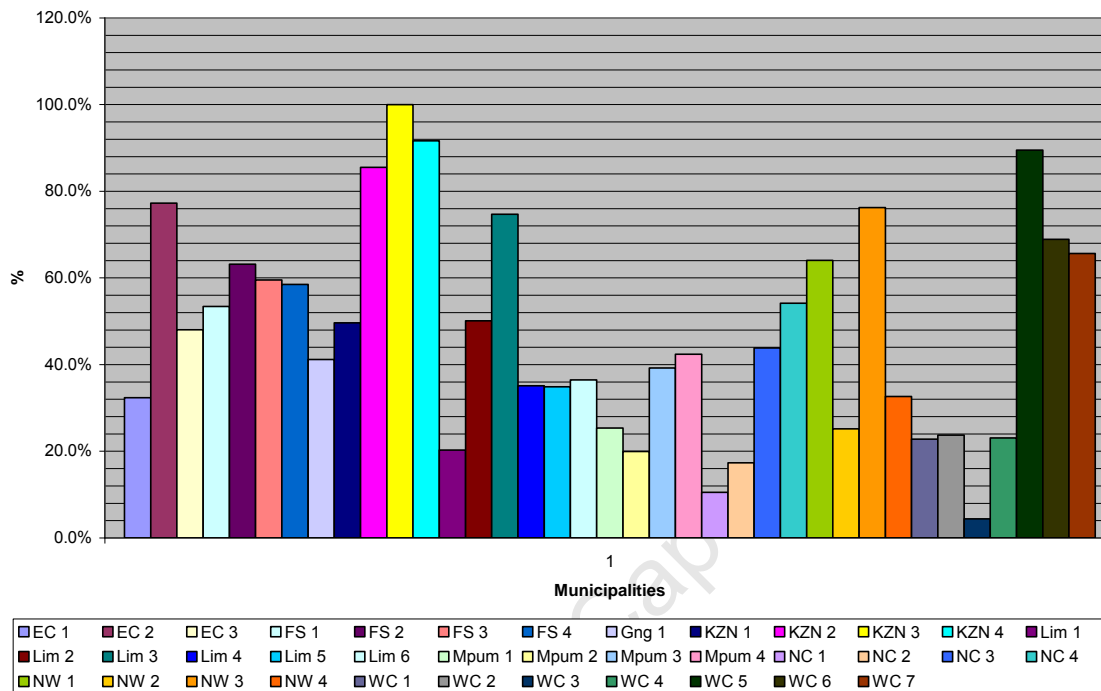
Graph 3



This graph shows the percentage which the projected revenues for each of the municipalities in the sample are made up by grants transferred from national government for the 2009/10 financial year. See section 12.4.3 of Chapter 12, especially page 198, for discussion.

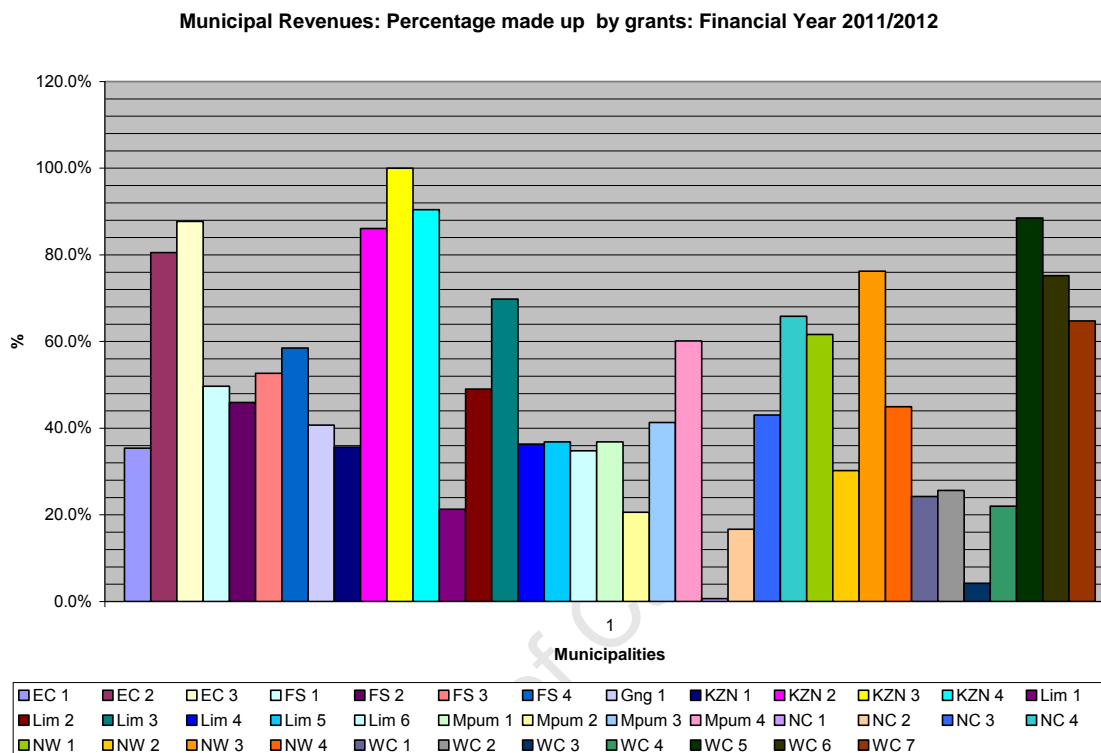
Appendix H Graph 4

Municipal Revenue: Percentage made up by grants: 2010/2011 Financial Year



This graph shows the percentage which the projected revenues for each of the municipalities in the sample are made up by grants transferred from national government for the 2010/11 financial year. See section 12.4.3 of Chapter 12, especially page 199, for discussion.

Appendix I Graph 5



This graph shows the percentage which the projected revenues for each of the municipalities in the sample are made up by grants transferred from national government for the 2011/12 financial year. See section 12.4.3 of Chapter 12, especially page 200, for discussion.

Appendix J
Table 5: Audit Outcomes: 2006/7 and 2007/8 Financial Years

This table shows the audit opinions expressed by the Auditor-General for each of the municipalities in the sample for the 2006/7 and 2007/8 financial years. See page 202, footnotes 291, 292, 293 and 294 for explanations of the terms “disclaimer of opinion”, “adverse opinion”, “qualified opinion” and “emphasis of matter” respectively. See section 12.5 of Chapter 12 for discussion.

Municipality	06/07	07/08
EC 1	Qualified	Qualified
EC 2	Disclaimer	Audit Outstanding
EC 3	Disclaimer	Adverse
FS 1	Qualified	Disclaimer
FS 2	Audit Outstanding	Audit Outstanding
FS 3	Audit Outstanding	Audit Outstanding
FS 4	Qualified	Qualified
Gng 1	Disclaimer	Audit Outstanding
KZN 1	Disclaimer	Disclaimer
KZN 2	Qualified	Qualified
KZN 3	Qualified	Qualified
KZN 4	Disclaimer	Qualified
Lim 1	Adverse	Audit Outstanding
Lim 2	Adverse	Disclaimer
Lim 3	Disclaimer	Disclaimer
Lim 4	Disclaimer	Audit Outstanding
Lim 5	Disclaimer	Disclaimer
Lim 6	Disclaimer	Qualified
Mpum 1	Disclaimer	Qualified
Mpum 2	Disclaimer	Disclaimer
Mpum 3	Disclaimer	Qualified
Mpum 4	Qualified	Disclaimer

Table 5(ctd)

Municipality	06/07	07/08
NC 1	Disclaimer	Qualified
NC 2	Disclaimer	Disclaimer
NC 3	Disclaimer	Qualified
NC 4	Disclaimer	Disclaimer
NW 1	Disclaimer	Audit Outstanding
NW 2	Disclaimer	Disclaimer
NW 3	Disclaimer	Disclaimer
NW 4	Disclaimer	Disclaimer
WC 1	Qualified	Qualified
WC 2	Disclaimer	Audit outstanding
WC 3	Qualified	Financially unqualified (with other matters)
WC 4	Qualified	Financially unqualified (with other matters)
WC 5	Financially unqualified (with other matters)	Financially unqualified (with other matters)
WC 6	Qualified	Financially unqualified (with other matters)
WC 7	Qualified	Financially unqualified (with other matters)

Appendix K

Table 6: Compliance with Good Management Practices

Table 6 shows the extent of compliance by the municipalities in the sample with “good management practices”, as identified by the Auditor-General. See page 204 of the study for discussion. “n/av” (not available) indicates that the financial statements were not submitted for audit on time and the Auditor-General was unable to comment on compliance with management practices.

Municipality	Clear trail of supporting documentation that is easily available and provided in time	Quality of Financial Statements and Management information	Timeliness of Financial Statements and Management information	Availability of Key Officials during audits	Development of and compliance with risk management and good internal control governance practices	Leadership/ Supervision/ monitoring
EC 1	No	No	No	No	No	No
EC 2	No	No	No	No	No	No
EC 3	No	No	No	Yes	No	No
FS 1	No	No	Yes	Yes	No	No
FS 2	n/av	n/av	n/av	n/av	n/av	n/av
FS 3	n/av	n/av	n/av	n/av	n/av	n/av
FS 4	No	Yes	Yes	No	No	Yes
Gng 1	No	No	No	No	No	No
KZN 1	No	No	No	No	No	No
KZN 2	No	No	No	No	No	No
KZN 3	No	No	No	No	No	Yes
KZN 4	Yes	Yes	No	No	Yes	No
Lim 1	No	No	No	No	No	No
Lim 2	No	No	No	No	No	No
Lim 3	No	No	Yes	No	No	No
Lim 4	No	No	No	No	No	No
Lim 5	No	No	No	No	No	No
Lim 6	No	No	Yes	Yes	No	Yes

Table 6 (ctd).

Municipality	Clear trail of supporting documentation that is easily available and provided in time	Quality of Financial Statements and Management information	Timeliness of Financial Statements and Management information	Availability of Key Officials during audits	Development of and compliance with risk management and good internal control governance practices	Leadership/ supervision/ monitoring
Mpum 1	No	No	Yes	No	No	No
Mpum 2	No	No	No	No	No	No
Mpum 3	Yes	Yes	Yes	Yes	Yes	No
Mpum 4	No	No	Yes	No	No	No
NC 1	No	Yes	Yes	No	No	No
NC 2	No	-No	Yes	No	No	No
NC 3	Yes	Yes	Yes	Yes	No	Yes
NC 4	No	No	Yes	No	No	Yes
NW 1	No	No	No	No	No	No
NW 2	No	No	No	No	No	No
NW 3	No	No	No	No	No	No
NW 4	No	No	No	No	No	No
WC 1	Yes	Yes	Yes	Yes	No	Yes
WC 2	No	No	No	No	No	No
WC 3	No	No	No	No	No	No
WC 4	Yes	Yes	Yes	Yes	No	No
WC 5	Yes	No	Yes	Yes	Yes	Yes
WC 6	- No	No	Yes	Yes	No	Yes
WC 7	Yes	No	Yes	Yes	No	Yes